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16 **UNITED STATES DISTRICT COURT**
 17 **DISTRICT OF NEVADA**

18 AMARIN PHARMA, INC. and AMARIN
 19 PHARMACEUTICALS IRELAND LIMITED,

20 Plaintiffs,

21 v.

22 WEST-WARD PHARMACEUTICALS CORP., *et.*
 23 *al.*,

24 Defendants.

Case No.: 2:16-cv-02525-MMD-NJK

(Consolidated with 2:16-cv-02562-MMD-NJK,
 2:16-cv-02658-MMD-NJK, and Case No. 2:17-
 cv-02641-MMD-NJK)

STIPULATION AND ORDER TO
EXTEND TIME FOR PLAINTIFFS TO
FILE THEIR REPLY CLAIM
CONSTRUCTION BRIEF
(First Request)

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1 IT IS HEREBY STIPULATED and agreed by and between Plaintiffs Amarin Pharma, Inc. and
2 Amarin Pharmaceuticals Ireland Limited (collectively, “Plaintiffs” or “Amarin”) and Defendants West-
3 Ward Pharmaceuticals Corp., West-Ward Pharmaceuticals International Limited, Dr. Reddy’s
4 Laboratories, Inc., Dr. Reddy’s Laboratories, Ltd., and Teva Pharmaceuticals USA, Inc. (collectively,
5 “Defendants”), by and through their respective undersigned counsel, that the deadline by which Amarin
6 must file their Reply Claim Construction Brief be extended to February 2, 2018. Amarin’s current
7 deadline is January 25, 2018. (ECF No. 60.) This stipulation is therefore filed more than 21 days in
8 advance of the deadline sought to be extended, as required by Local Rule 26-4. This is the parties’ first
9 request to extend the deadline for Amarin’s Reply Claim Construction Brief.

10 At this point, the parties have complied with the previous deadlines in the Discovery Plan and
11 Scheduling Order. (*See* ECF No. 60 at 1–2; ECF No. 88.) The parties are currently engaged in briefing
12 the claim construction issues in advance of the April 24, 2018 claim construction hearing. (*See* ECF No.
13 60, ECF No. 103.) Amarin submitted its Opening Claim Construction Brief on November 1, 2017
14 (ECF No. 89) with the supporting Declaration of Dr. Michael Miller, M.D. (ECF No. 89-1). On
15 December 12, 2017, Defendants submitted their Responsive Claim Construction Brief (ECF No. 102)
16 with the supporting Declaration of Ronald H. Wharton, M.D. (ECF No. 102-1).

17 The parties have long contemplated that the claim construction declarants would be deposed
18 during the claim construction stages of this case. For example, in the Proposed Discovery Plan
19 Scheduling Order, Amarin explained that “[t]hese deposition are necessary to ensure that the parties can
20 adequately respond to any testimony that is submitted in support of the parties’ claim construction
21 positions.” (ECF No. 55 at 7.) However, Defendants’ claim construction declarant, Dr. Wharton, is not
22 available for his deposition until January 24, 2018—the day before the current deadline for Amarin’s
23 Reply Claim Construction Brief. Accordingly, good cause exists for the requested extension. Without
24 the requested extension, Amarin will be deprived of any meaningful opportunity to address the
25 testimony that Dr. Wharton will give at his January 24, 2018 deposition before filing its Reply Brief due
26 the next day. The requested extension provides adequate time to obtain the final transcript from the
27 deposition, review the transcript, and revise the brief in accordance with the deposition testimony. The
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1 prejudice to Amarin from the current schedule is particularly acute because Wharton opines that many of
2 Amarin's patent claims are invalid. (See Wharton Decl. ¶¶ 64–73, ECF No. 102-1.) Thus, without the
3 extension, Amarin would be essentially precluded from addressing Dr. Wharton's claim construction
4 opinions in its Reply Brief, but also unable to fully respond to Dr. Wharton's opinions that many of
5 Amarin's patent claims should be found invalid at this very early stage of the case. See *Phillips v. AWH*
6 *Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005) (“[E]xtrinsic evidence consisting of expert reports and
7 testimony . . . can suffer from bias The effect of that bias can be exacerbated . . . if the expert's
8 opinion is offered in a form that is not subject to cross-examination.”).

9 The parties further stipulate and agree that the requested extension will not be prejudicial to any
10 party. The additional eight days will not impede on any of the parties' abilities to prepare for the April
11 24, 2018 claim construction hearing. Indeed, even with the requested extension to February 2, 2018, the
12 parties and the Court will be in possession of all claim construction briefing for well over two months
13 before the hearing. In addition, Amarin agrees to make its claim construction declarant, Dr. Miller,
14 available for deposition between February 9, 2018 and March 31, 2018, as requested by Defendants.
15 Moreover, the requested extension will not affect any other currently scheduled case deadline. (ECF No.
16 60.)

17 Finally, there have been no previous extensions of time with respect to the deadline for Amarin's
18 Reply Claim Construction Brief. Accordingly, the parties stipulate that Amarin shall have up to and
19 including February 2, 2018, to file its Reply Claim Construction Brief.

20 DATED: January 3, 2018

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22 Amarin shall have up to and including February 2, 2018, to file its Reply Claim Construction Brief.

23 **IT IS SO ORDERED.**

24 

25 UNITED STATES DISTRICT JUDGE

26 DATED: January 4, 2018

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 3, 2018, I electronically transmitted a true and correct copy
3 of the foregoing **STIPULATION AND ORDER TO EXTEND TIME FOR PLAINTIFFS**
4 **TO FILE THEIR REPLY CLAIM CONSTRUCTION BRIEF (First Request)** to the
5 following counsel of record in this matter:

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