

[Docket No. 201]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE

SHIRE LLC,

Plaintiff,

Civil No. 14-6095 (RMB/JS)

v.

AMERIGEN PHARMACEUTICALS LTD.,

**MEMORANDUM ORDER**

Defendant.

**(PUBLICLY FILED)**

THIS MATTER comes before the Court upon the Motion to Set a New Trial Date by Plaintiff Shire LLC [Docket No. 201], as well as this Court's January 13, 2017 Order directing Defendant Amerigen Pharmaceuticals Ltd. to advise the Court whether it agrees to pay Shire's reasonable attorneys' fees and costs incurred from January 20, 2017 through the conclusion of the trial and the post-trial briefing, [REDACTED]  
[REDACTED], if the trial commences as currently scheduled on February 27, 2017 [Docket No. 221].

The Court has received Amerigen's January 19, 2017 letter in response to its Order, indicating that "Amerigen is compelled to choose" to proceed with trial on February 27, 2017 and pay Shire's reasonable attorneys' fees and costs [REDACTED]  
[REDACTED], because of its "duty to

'reasonably cooperate in expediting the [litigation].'"

[Docket No. 224] (quoting 21 U.S.C. § 355(j)(5)(B)(iii);

21 C.F.R. § 314.107(b)(3)(i)(A)) (emphasis added).

It appears that Amerigen believes that this Court has given Amerigen no real choice in the matter, in that if it were to choose a summer 2017 trial, it would be subject to a finding by this Court that it failed to reasonably cooperate in expediting the action, pursuant to 21 U.S.C. § 355(j)(5)(B)(iii). The Court hereby clarifies that its presentment of this option was not to force Amerigen's hand. If Amerigen elects to proceed with trial in the summer of 2017, rather than proceed with trial on February 27, 2017 and pay Shire's reasonable attorneys' fees and costs [REDACTED], the Court does not construe such election as a failure to reasonably cooperate in expediting the action, as set forth in 21 U.S.C. § 355(j)(5)(B)(iii). Having considered the parties' arguments and representations in the briefing on the Motion to Set a New Trial Date, in this Court's view, either course of action properly and adequately balances the equities involved, including the possibility of prejudice and hardship to the parties and the best interests of judicial efficiency and resources, as well as this Court's inherent authority to manage its own docket.

ACCORDINGLY, IT IS HEREBY on this 20th day of January 2017,  
ORDERED that, unless the Court is advised otherwise by  
January 25, 2017, the trial in this matter will commence on  
February 27, 2017, and Amerigen will be responsible for  
reimbursement of Shire's reasonable attorneys' fees and costs  
incurred from January 26, 2017 through the conclusion of the  
trial and the post-trial briefing, [REDACTED]

[REDACTED].  
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s/Renée Marie Bumb  
RENÉE MARIE BUMB  
UNITED STATES DISTRICT JUDGE