UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IN RE: TASIGNA (NILOTINIB) PRODUCTS LIABILITY LITIGATION

Case No. 6:21-md-3006-RBD-DAB (MDL No. 3006)

This document relates to all actions.

ORDER

This matter comes before the Court with briefing and oral argument on August 5, 2022 due to a dispute between the parties regarding Plaintiffs' designations for a requested deposition of the Defendant pursuant to Rule 30(b)(6) and the Defendant's response thereto. There are three areas of disagreement. At the risk of over-simplification, the issues are as follows:

1.) In response to Plaintiffs' notice, Novartis has designated four witnesses (including former employees) as their representatives and wishes to rely on the previous testimony of those witnesses (taken in their individual capacities) as the responsive Rule 30 (b)(6) discovery. Plaintiffs wish to question these witnesses further in their corporate capacities.

2.) Novartis objects to producing witnesses with respect to foreign regulation and licensing issues.

3.) Novartis objects to discovery related to its decision not to seek a "black box" warning, asserting that this FDA-related issue is pre-empted under federal

law.

The Court takes note of the following principles and circumstances. As a general matter, a party seeking to take a deposition under Rule 30(b)(6) is master of its designated topics. Concomitantly, the responding party is master of (and is bound by) its responsive witness designations.

In this case, the issues likely to be pertinent for Rule 30(b)(6) examination have been obvious since before the cases were filed. Plaintiffs could have formally identified the issues much earlier than they did (though no rule requires early identification). Similarly, Novartis could have advised that these witnesses were going to be its designees in advance of their individual depositions (though no rule requires such notification).

Owing to these choices and circumstances the depositions went forward without the Plaintiffs using the opportunity to make suitable corporate inquiries, which they are entitled to have with respect to 30(b)(6) witnesses. In the Court's view, neither party is entirely free from responsibility for the additional burden that has resulted.

As noted above, Novartis may rely on and be bound by the prior testimony. However, except for avoiding duplication, Novartis is not entitled to shield its designated witnesses from 30(b)(6) adverse examination as such. On the other hand, Plaintiffs have had substantial time examining these witnesses and has been

vague as what their additional inquiries may be. As a result, any further depositions of the witnesses in their corporate capacities will be limited to a cumulative five hours.

As to the subject of foreign licensing and regulation, based on the arguments and results presented, the Court will allow inquiry as to Canada and not otherwise.

Regarding inquiry as to the possible black box issue, discovery may go forward as there has been no finding of pre-emption.

DONE and **ORDERED** in Orlando, Florida, on August 8, 2022.

David A. Baker

DAVID A. BAKER
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record