

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MYLAN INSTITUTIONAL LLC,	§	
APICORE US LLC,	§	
	§	Case No. 2:16-CV-00491-RWS-RSP
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
AUROBINDO PHARMA LTD, et al.,	§	
	§	
<i>Defendants.</i>	§	

ORDER

On February 6, 2017, the Court issued an Order (Docket No. 122) adopting the Magistrate Judge’s Report and Recommendations (Docket No. 101) on Plaintiffs’ Motion for a Preliminary Injunction (Docket No. 20). In the Order, the Court states, “Plaintiffs’ Motion for Preliminary Injunction . . . will be [granted] following Plaintiffs’ submission of an adequate injunction bond. Defendants will be enjoined from manufacturing, selling or offering for sale, using, or importing the accused isosulfan blue product within the United States until further order of the Court.” Docket No. 122 at 3. On February 10, 2017, Defendants filed a notice of appeal of the Court’s Order to the Federal Circuit. Docket No. 126.

On February 13, 2017, the Magistrate Judge issued an Order instructing the parties to submit a joint proposed preliminary injunction by February 28, 2017 that identifies any disagreements as to the scope of the preliminary injunction. Docket No. 129. On February 21, 2017, Defendants submitted a brief on the preliminary injunction bond and requested a bond in the amount of \$24,750,000. Docket No. 134 at 2. On February 22, 2017, Plaintiffs posted a bond in the amount of \$24,750,000. Docket No. 136.

On February 23, 2017, Plaintiffs filed an emergency motion requesting that the Court expedite the entry of the preliminary injunction and attached a proposed preliminary injunction. Docket No. 138. Plaintiffs contend that Defendants are “flooding distributors and wholesalers with their infringing product before formal imposition of the injunction.” *Id.* at 1. Plaintiffs state that “one of the [Group Purchasing Organizations] that currently contracts with Aurobindo for their isosulfan blue product[] issued a ‘Pharmacy Alert’ notifying its members of the pending preliminary injunction and recommending their members to ‘make appropriate orders and/or back-orders’ of isosulfan blue due to the pending injunction.” *Id.* Plaintiffs attached a copy of the Pharmacy Alert to their motion. Docket No. 138-7. Plaintiffs further contend that in the first three weeks of February alone, Aurobindo has manufactured and imported more than double the amount of its average monthly sales of isosulfan blue. Docket No. 138 at 3–4.

The Court’s February 6, 2017 Order stated that “Plaintiffs’ Motion for Preliminary Injunction . . . will be [granted] following Plaintiffs’ submission of an adequate injunction bond.” Docket No. 122 at 3. That condition has been satisfied as Plaintiffs have submitted an injunction bond in the amount requested by Defendants. Docket No. 136; Docket No. 134 at 2. The Court’s February 6, 2017 Order further states that Defendants would “be enjoined from manufacturing, selling or offering for sale, using, or importing the accused isosulfan blue product within the United States until further order of the Court.” *Id.* The Magistrate Judge’s February 13, 2017 Order required the parties’ proposed preliminary injunctions to include similar language consistent with the Court’s February 6, 2017 Order. In light of the contentions presented in Plaintiffs’ emergency motion and because the parties’ proposed preliminary injunctions are required to include this language, the Court finds that it is appropriate for this portion of the injunction to be entered immediately.

The Court recognizes that Defendants have not had an opportunity to respond to Plaintiffs' emergency motion and that the parties continue to dispute the scope of the injunction. The parties have previously been ordered to submit a proposed preliminary injunction by February 28, 2017; Defendants may submit any arguments in opposition to Plaintiffs' emergency motion by February 28, 2017, either separately or together with their proposed preliminary injunction.

Accordingly, Defendants are hereby

ENJOINED from manufacturing, selling or offering for sale, using, or importing the accused isosulfan blue product within the United States until further order of the Court. Defendants are further

ORDERED to submit a proposed preliminary injunction that complies with the Magistrate Judge's February 13, 2017 Order (Docket No. 129). Upon review of both Plaintiffs' and Defendants' submissions to the Court, the Court will issue a revised Order detailing the scope of the preliminary injunction if appropriate.

SO ORDERED.

SIGNED this 24th day of February, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE