

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY

IN RE PROPECIA® LITIGATION

Case No. 623

FILED

SEP 25 2013

Civil Action

JUDGE JESSICA R. MAYER

THIS DOCUMENT APPLIES TO
ALL CASES

**CASE MANAGEMENT ORDER
REGARDING ELECTRONICALLY
STORED INFORMATION**

THIS MATTER having been presented to the Court on consent of the parties, and for good cause shown; IT IS ORDERED that all electronically stored information (“ESI”) produced by Defendants shall be produced in accordance with the following protocol:

I. Production Format of Defendants’ Electronically Stored Information

A. Definitions

1. “Document” means paper documents or electronically stored information (ESI) existing in any medium from which information can be obtained or translated into reasonably usable form.
2. “Native File(s)” means ESI in the file type for (or of) the application in which such ESI is normally created, viewed and/or modified.
3. “Metadata” means: (i) information embedded in a Native File that is not ordinarily viewable or printable from the application that generated, edited, or modified such Native File; and (ii) information generated automatically by the operation of a computer or other information technology system when a Native File is created, modified, transmitted, deleted or otherwise manipulated by a user of such system.
4. “Static Image(s)” means a representation of ESI produced by converting a Native File into a standard image format capable of being viewed and printed on standard computer systems. A Tagged Image File Format (TIFF) image is an example of a Static Image.
5. “Load/Unitization file” means a set of paper-scanned images or electronically processed files and indicates where individual pages or files belong together as documents, including attachments, and where each

document begins and ends. A Load/Unitization file will also contain data relevant to the individual documents, such as Metadata, coded data, and OCR or Extracted Text.

6. "OCR" means the optical character recognition file which is created by software used in conjunction with a scanner that is capable of reading text-based documents and making such documents searchable using appropriate software.
7. "Extracted Text" means the text extracted from a Native Electronic File and includes all header, footer and document body information.
8. "Custodial Files" means any and all responsive documents (i.e. electronic, paper, microfiche etc.) currently in the possession of, or previously held by, any designated individual ("Custodian") irrespective of whether the document was held by the Custodian directly, or by a third party on the Custodian's behalf that are within Defendants' (or Defendants' agent's) custody, care and control.

Custodial Files may be obtained from any of the following sources: those held in the Custodian's physical or virtual offices, on the Custodian's behalf by a third party employee (e.g., an administrative assistant), located within a central filing area or shared libraries, electronically stored on any form of PC, laptop, or tablet device irrespective of whether the device is owned by Merck or the Custodian directly (e.g., Email, PST Folders, OST Folders), smart phones, hand-held devices, cellular phones, USB drives, external drives, Loose Media (e.g. DVDs), remote desktops, virtual private networks (VPN's). Plaintiffs reserve the right to request production of any and all backup devices/systems utilized by Defendants throughout the Relevant Time Period including, but not limited to, company main-frame server(s), offsite storage facilities (e.g., Iron Mountain), and all historical storage devices or systems (irrespective whether the document is maintained in a physical or virtual capacity) if Plaintiffs deem discovery from other sources is not responsive or complete.

B. Format of Production

1. Paper Documents

Paper documents, including spreadsheets maintained in paper form, will be produced either in hard copy form or as TIFF images (consistent with the specifications in Section I.B.2.a.). If provided as TIFF images, the production will include the appropriate Load/Unitization files which will, at a minimum, contain the following fields (described in detail in Section I. B. 2. (d and e.) infra.):

- a. Beginning Production Number (ProdBeg);
- b. Ending Production Number (ProdEnd);
- c. Beginning Attachment Production Number (BegAttach);
- d. End Attachment Production Number (EndAttach);
- e. Custodian/Source;
- f. Document Type;
- g. Page Counts; and
- h. OCR.TXT file.

In scanning paper documents, distinct documents shall not be merged into a single record, and single documents shall not be split into multiple records (*i.e.*, paper documents should be logically unitized). In the case of an organized compilation of separate documents – for example, a binder containing several separate documents behind numbered tabs – the document behind each tab should be scanned separately, but the relationship among the documents in the binder should be reflected in proper coding of the beginning and ending document and attachment fields. Parent-child relationships (the association between an attachment and its parent document) shall be preserved. Original document orientation shall be maintained (*i.e.*, portrait to portrait and landscape to landscape). When subjecting physical documents to an OCR process, any available settings such as "auto-skewing" or "auto-rotation" shall be utilized.

2. Electronically Stored Information

- a. All TIFF-formatted documents will be single page, Group 4 TIFF at 300 x 300 dpi resolution and 8.5 x 11 inch page size, except for documents that in the producing party's reasonable judgment require a different resolution or page size. If a color image is produced in black and white, the receiving party may request the producing party to produce the original, color image. After receiving such a request for color production, the parties will meet and confer on a reasonable and cost-effective means of providing the requested documents.
- b. In the absence of agreement of the parties or order of Court, a Static Image will be provided in TIFF format (.TIF files). The image file names shall match the Bates number assigned to the image. All documents are to be provided with multi-page searchable OCR or Extracted Text files, as described in paragraph (c).
- c. Text Files. For each document, a single text file shall be provided along with the image files and metadata. The text file name shall be the same as the Bates number of the first page of the document. File names shall not have any special characters or embedded spaces.

Electronic text must be extracted directly from the native electronic file unless the document was redacted, an image file, or a hard copy document. In these instances, a text file shall be created using OCR and shall be produced in lieu of extracted text. Under no circumstances shall the receiving party be required to rely upon a less accurate version of the text than the producing party. For example, if the producing party has access to extracted text from electronic document files, the receiving party shall receive extracted text as well, instead of OCR text generated from an image file.

- d. There will be two Load/Unitization files accompanying all productions. One will be the Image load file and the other will be the Metadata load file. The specifics of these files are detailed in (i.) and (ii.) below:

(i.) Image Load File

- 1) Every Document referenced in a production image load file shall have all corresponding images, text, and data logically grouped together in a directory structure with a common key to properly load the data.
- 2) Documents shall be produced in only one image load file throughout the productions, unless that document is noted as being a replacement document in the Replacement field of the data load file.
- 3) The name of the image load file shall mirror the name of the delivery volume, and should have an .lfp, .opt or .dii* extension (e.g., ABC001.lfp). The volume names shall be consecutive (i.e., ABC001, ABC002, et. seq.) *If .dii file is produced, the accompanying metadata load file shall be separate from the .dii file and not contained within the .dii file.
- 4) The load file shall contain one row per TIFF image.
- 5) Every image in the delivery volume shall be contained in the image load file.
- 6) The image key shall be named the same as the Bates number of the page. Load files shall not span across media (e.g., CDs, DVDs, Hard Drives, etc.), i.e., a separate volume shall be created for each piece of media delivered.

(ii.) Metadata Load File

- 1) The metadata load file shall use the following delimiters:
 - Column Delimiter: Pipe – | (ASCII 124)
 - Text Qualifier: Caret – ^ (ASCII 94)
 - New line: Registered sign - ® (ASCII 174)
 - 2) Data for documents shall be produced in only one data load file throughout the productions, unless that document is noted as being a replacement document in the Replacement field of the data load file.
 - 3) The first record shall contain the field names in the order of the data set forth in (1. B. 2. e.). Blank metadata fields shall indicate those fields that are were not applicable to a document and/or were not captured at the point of collection.
 - 4) All date fields shall be produced in "mm/dd/yyyy hh:mm:ss AM" format.
 - 5) A carriage-return line-feed shall be used to indicate the start of the next record.
 - 6) Load files shall not span across media (e.g., CDs, DVDs, Hard Drives, etc.); a separate volume shall be created for each piece of media delivered.
 - 7) The name of the metadata load file shall mirror the name of the delivery volume, and shall have a .dat, .csv or .txt extension (i.e., ABC001.dat).
 - 8) The volume names shall be consecutive for each produced source. (i.e., ABC001, ABC002, et. seq.).
- e. ESI will be produced to the requesting party as Static Images together with a Load/Unitization file that will contain the Metadata fields described below on the document level, except as set forth in section (B.) (2.) (l.) infra. The following fields associated with each electronic document including the body of the document, will be produced in the appropriate Load/Unitization file.

	Field	Definition	Doc Type	Source: Load File (L) or Metadata (M)
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1	SOURCE	Name of party producing the document	All	L
2	CUSTODIAN(*)(* *)	Name of person or data source (non-human) from where documents/files are produced. <i>*Where redundant names occur, individuals should be distinguished by an initial which is kept constant throughout productions (e.g., Smith, John A. and Smith, John B.)</i> <i>** Defendant will use reasonable means to determine if a custodian changed his/her name for work purposes during the relevant time period (e.g., Jane Doe got married, changed her name to Jane Smith and used her married/hyphenated name at work). Defendant will notify plaintiffs of any and all name changes in production cover letters.</i>	All	M or L
3	BEGBATES	Beginning Bates Number (production number)	All	L
4	ENDBATES	End Bates Number (production number)	All	L
5	PGCOUNT	Number of pages in the document	All	L
6	FILE EXTENSION	Commonly associated application for the specified file type.	All	M

7	FILEPATH	File source path for all electronically collected documents and emails, which includes location, folder name, file name, and file source extension.	All	M
8	FOLDER	Folder name of Outlook PST files where emails are located	Email	M
9	NATIVEFILELINK	For documents provided in native format only	All	L
10	TEXTPATH	File path for OCR or Extracted Text files per paragraph (d) above	All	L
11	FROM	Sender	Email	M
12	TO	Recipient	Email	M
13	CC	Additional Recipients	Email	M
14	BCC	Blind Additional Recipients	Email	M
15	SUBJECT	Subject line of email	Email	M
16	PARENTBATES	BeginBates number for the parent email of a family (will not be populated for documents that are not part of a family)	Email	L
17	ATTACHBATES	Bates number from the first page of each attachment	Email	L
18	BEGATTACH	First Bates number of family range (i.e. Bates number of the first page of the parent email)	Email	L
19	ENDATTACH	Last Bates number of family range (i.e. Bates number of the last page of the last attachment)	Email	L
20	ATTACHCOUNT	Number of attachments to an email	Email	L
21	ATTACHNAME	Name of each individual attachment	Email	M
22	DATESENT (mm/dd/yyyy hh:mm:ss AM)	Date Sent	Email	M

23	DATERCVD (mm/dd/yyyy hh:mm:ss AM)	Date Received	Email	M
24	EMAILDATSORT (mm/dd/yyyy hh:mm:ss AM)	Sent Date of the parent email (physically top email in a chain, i.e. immediate/direct parent email)	Email	L
25	READ/UNREAD	Whether the Outlook item was read or unread at the time of collection. Values provided will be "Yes" for read, "No" for unread, and a null value where the read/unread flag value is unavailable.	Email	M
26	HASHVALUE	MD5 Hash Value for Edocs	Edocs	M
27	FILENAME	Windows file name of document	Edocs	M
28	AUTHOR	Creator of a document	Edocs	M
29	DATECRTD (mm/dd/yyyy hh:mm:ss AM)	Creation Date	Edocs	M
30	SAVED BY*	For Microsoft Office documents that contain this information, reflects all individuals who have saved a document. <i>*To the extent that this information is turned on and can be captured at the point of collection, it will be captured and produced.</i>	Edocs	M
31	LASTMODD (mm/dd/yyyy hh:mm:ss AM)	Last Modified Date	Edocs	M

32	DocumentType	Descriptor for the type of document: "E-document" for electronic documents not attached to emails; "Emails" for all emails; "E-attachments" for files that were attachments to emails; and "Physicals" for hard copy physical documents that have been scanned and converted to an electronic image.	All	M
33	Importance	High Importance – indicates Priority in Email message.	Email	M
34	ProdVol	Name of media that data was produced on. Wave 001 – Hard Drive	All	M
35	PAPERCOLOR	Indicates if the scanned paper document contains color that is meaningful (color is needed in order to understand the meaning of the document).	Paper	M

This list of fields does not create any obligation to create or manually code fields that are not automatically generated by the processing of the ESI or that do not exist as part of the original Metadata of the document, with the exception of the Source, Custodian, Document Type and FilePath fields, which shall be populated by the producing party. The parties retain the right to move the Court for the production of additional electronic metadata fields should ongoing discovery reveal the need for such Metadata. The designation of a document as a "Protected Document" pursuant to the Protective Order of Confidentiality shall include the metadata produced for that document.

- f. Bates Numbering: All images must be assigned a Bates/control number that shall always: (1) be unique across the entire document production, (2) maintain a constant length (zero/0-padded) across the entire production, (3) contain no special characters or embedded spaces, and (4) be sequential within a given document. If a Bates number or set of Bates numbers is skipped in a production, and not otherwise identified on a privilege log, the producing party will

disclose the Bates numbers or ranges in a cover letter accompanying the production. The parties will agree on a Bates numbering convention (e.g., ABCD000000001).

- g. When processing ESI, EST should be selected as the time zone. To the extent that a party has already processed ESI using a different time zone, the producing party will note the time zone used in its processing.
- h. Documents with dynamic fields for file names, dates, and times will be processed to show the field code (e.g., “[FILENAME]” or “[AUTODATE]”), rather than the values for such fields existing at the time the file is processed.
- i. When the Static Image is produced, the producing party shall make reasonable attempts to maintain and not modify the original Native File and its metadata.
- j. The information contained within Databases (defined as an electronic environment created to manage raw or structured data, often in table/row/column format, for specific purposes; distinguishable from a document management system, which often contains unstructured electronic documents such as Microsoft Word files) shall be produced, in a reasonably usable production format which shall be determined by the parties for each such database in advance of production. The parties agree to meet and confer in good faith regarding (1) the identification and production of responsive databases, (2) the production formats, (3) the production schedule, and (4) the exact search terms to be used.
- k. Electronic file collection will be “De-NISTed”, removing commercially available operating system and application files contained on the current NIST file list. Identification of NIST list matches will be through MD5 Hash values.
- l. Defendants will globally de-duplicate identical ESI as follows:
 - (i) Electronic Files: Electronic files will be de-duplicated based upon calculated MD5 Hash values for binary file content. File contents only will be used for MD5 Hash value calculation and will not include operating system metadata (filename, file dates) values. Near-duplicate documents shall be produced rather than removed.
 - (ii) Messaging Files: Messaging files will be de-duplicated based upon MD5 Hash values for the message family, including

parent object and attachments. The following fields will be used to create the unique value for each message: To; From; CC; BCC; Date Sent; Subject; Body; and, attachment count. Messaging materials will be de-duplicated at a family level, including message and attachment(s).

- m. Embedded Objects: Objects embedded in Microsoft Word and .RTF will be extracted as separate documents and produced as attachments to the document. Objects embedded in other document formats shall be produced as native files maintaining a parent-child relationship.
- n. Compressed files. Compression file types (i.e., .CAB, .GZ, .TAR, .Z, .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual folders and/or files.
- o. Audio and Video Files. All audio files and video files shall be produced in native format with the source file path provided. For the purposes of identifying and collecting metadata, Audio and Video files shall be treated as E-Documents.
- p. Replacement files: Any documents that are replaced in later productions shall be clearly designated as such, by appending a “-R” to the production prefix and by a letter accompanying the production clearly designating such documents as replacements.
- q. Native Files. The parties acknowledge that production in TIFF and load file format may be inadequate for certain types of ESI. The parties agree that ESI held as Excel (.xls) files or spreadsheets, PowerPoint (.ppt) files or slide programs, video files, audio files, and multi-media files shall be produced in their native formats. Exceptions to this will be if a spreadsheet (including .xls files) or slide (including .ppt files) contains redactions, then the document will be produced in TIFF image format with the applicable redactions applied. The parties will meet and confer in the event Plaintiffs request Native Files, including those files with redacted material.
- r. PowerPoint and other similar slide programs, all hidden slides and speaker notes must be unhidden and processed to show the slides and notes on the TIFF image. Color PowerPoint presentations shall be converted to color TIFF images if the color is meaningful that is, if the color is needed in order to understand the meaning of the document- and black and white PowerPoint presentations shall be converted to black and white TIFF images, provided that proper grayscale printing is enabled to ensure that any dark colored text is not hidden from view by other dark objects/drawings around the text. If a dispute arises with

respect to the provision, the parties agree to meet and confer in an effort to resolve their differences.

- s. Any native files that are produced shall be produced with the source file path provided, as well as all extracted text and applicable metadata fields set forth in Section I. B. 2. E.
- t. All ESI produced in discovery shall be maintained and safeguarded by the producing party in its native format, and the parties may request and obtain the ESI in its native format for any document or documents for which the requesting party makes a good faith showing of need.

C. Objections to Production of ESI

- 1. Nothing in this Order shall preclude Defendants from objecting to such request or making an application to the Court based on considerations of cost and burden consistent with the Court Rules.
- 2. If asserting an objection based on paragraph I(C)(1), the responding party will inform the requesting party of the electronic information it is not willing to produce, the nature and location of the information claimed to not be reasonably accessible, the reason(s) why the requested production would impose an undue burden or is unreasonably costly, and afford the requesting party an opportunity to propose an alternative means of compliance with the request, including payment of all or part of the costs of retrieving the information.
- 3. Parties will use reasonable, best efforts to comply with the terms of this Order. In the event a party determines that it cannot materially comply with any requirement herein, they will disclose their inability to comply and parties will meet and confer regarding resolution of the identified issue.

D. Continuing Obligations

- 1. To expedite discovery of relevant electronic evidence and reduce costs, the parties' computer experts will informally cooperate and discuss procedures or protocols to facilitate identification, retrieval and production of computerized information. This responsibility shall be continuing, unless otherwise ordered by the Court.
- 2. The inadvertent production of any materials constituting or containing attorney-client privileged information or attorney work product shall not waive any claim of privilege and shall be governed by the Protective Order submitted to the court on September 7, 2012 for entry.

3. The parties will work with one another in good faith to resolve any issues, disputes or objections that arise in connection with electronic discovery issues before raising such matters with the court. Issues shall be raised promptly in writing, and the parties shall have good faith discussions to attempt to resolve the matter. The parties will use their best efforts to raise any objections or other requests related to a production within ninety (90) days of receipt of that production. In any event, the parties must raise any objections or other issues sufficiently in advance of the close of discovery to permit good faith negotiations to resolve the matter and briefing of any related motion such that the court has a reasonable time to rule thereon prior to the close of discovery.

II. Search Terms/Culling

- A. To the extent required by the Federal Rules of Civil Procedure, the Parties agree that Defendants shall conduct reasonable searches for reasonably accessible ESI and paper documents. "Reasonable" is to be determined by agreement of the parties. If the parties cannot agree, "reasonable" shall be determined by the Court.
- B. Upon agreement of the parties, Defendant will utilize search terms to cull potentially responsive ESI collected from Merck systems prior to review and production. If the parties cannot agree when to use search terms, the Court shall determine whether search terms shall be used.
- C. Search Terms shall be developed as follows:
 1. Defendants supplied the Plaintiffs' Executive Committee ("PEC") with the names of five (5) Substantive Custodians from the topics set forth below. A "Substantive Custodian" shall mean a Custodian who is or was involved in the development, regulation, marketing or distribution of Propecia and/or Proscar (Finasteride) from the following working groups (to the extent the name is different than the exact internal title assigned by Merck, Defendants shall meet and confer with the PEC so as to identify the correct title):
 - a) Research and Development;
 - b) Regulatory Affairs;
 - c) Sales/Marketing;
 - d) Labeling;
 - e) Clinical Trials.
 2. The PEC has notified Defendants whether they object to the proposed Custodians. If after a meet and confer the Parties are unable to reach a consensus of the proposed Substantive Custodians, they shall submit the

issue to this Court for consideration at the July Case Management Conference.

3. Upon identifying the names of the five (5) Substantive Custodians, Defendants shall supply to the PEC the complete Custodial Files for two of the custodians on or before June 30, 2013, followed by the remaining 3 custodial files to be produced on a rolling basis beginning July 22, 2013 for each Custodian.
4. On or before July 31, 2013, the PEC shall supply Defendants a search term list ("Plaintiffs' Search Term List") based upon the review of the Substantive Custodial Files.
5. The Parties shall meet and confer between August 1 and September 1, 2013. If the Parties are unable to agree upon a search term list the Parties shall submit the issue to the Court for review via simultaneous briefs one week prior to the next Case Management Conference.
6. Nothing in this Order shall be interpreted to stay Defendants' obligation to produce responsive documents that are collected without search terms. Defendants shall produce those documents collected in connection with their "document-by-document" review on a rolling basis as follows:

III. Production of Documents By Plaintiffs

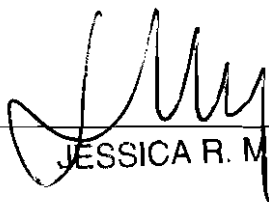
As this order addresses only the specifications on documents to be produced by Defendants, document production by Plaintiffs, including the specifications, data, and format of such, will be addressed in a future order.

ORDERED that a true copy of this Order shall be served within seven (7) days of receipt

IT IS SO ORDERED.

SIGNED AND ENTERED this 25th day of September, 2013.

UNOPPOSED



JESSICA R. MAYER, J.S.C.