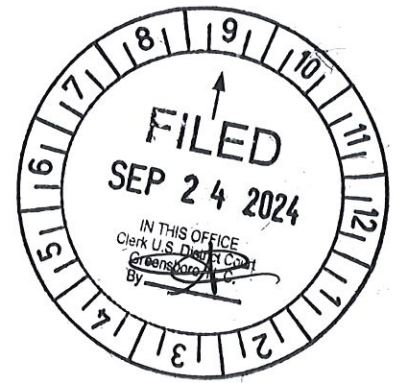


IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



NATERA, INC.,

Plaintiff,

v.

NEOGENOMICS LABORATORIES,
INC.,

Defendant.

1:23-CV-629

ORDER ON MOTIONS AND SETTING SCHEDULE

The parties have resolved all issues related to Natera's claims that RaDaR 1.0 infringes its '035 and '454 patents and have largely resolved logistical and scheduling issues related to Natera's claim that RaDaR 1.1 infringes the '454 patent. *See* Docs. 324, 328. The parties also agree that the operative complaint covers Natera's remaining claim that RaDaR 1.1 infringes the '454 patent. The only matter of disagreement is what standard will govern a potential motion to amend should Natera determine one is appropriate after receiving more discovery about RaDaR 1.1.

First, the Court will grant the Joint Motion for Partial Dismissal and Entry of a Stipulated Permanent Injunction. Doc. 328. The Stipulated Order and Permanent Injunction will be entered separately.

Second, in view of these developments and the parties' reasonable agreement about the adjustments to the Scheduling Order that are needed in order to fairly but quickly move this case forward as to RaDaR 1.1, good cause has been shown to amend

the Scheduling Order. The Court adopts the Schedule proposed by the parties, *see* Doc. 324, with the addition of another mediated settlement conference, as set forth herein.

Third, the deadline for the parties to seek leave to amend the pleadings will be extended briefly. As NeoGenomics recognized at the hearing on September 12, 2024, the fact that the deadline for filing a motion to amend has passed is not determinative. Natera did not learn about RaDaR 1.1 until early July, after the deadline had passed. Since then, NeoGenomics has provided Natera with some information about RaDaR 1.1. But it has not finalized the Standard Operating Procedures for producing RaDaR 1.1, and discovery about RaDaR 1.1 is ongoing. NeoGenomics expects to finalize the SOPs and produce them to Natera in October.

Under Federal Rule of Civil Procedure 15(a), courts should freely grant leave to amend complaints “when justice so requires.” FED. R. CIV. P. 15(a)(2). “Generally, leave [to amend] should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile.” *Moore v. Equitrans, L.P.*, 27 F.4th 211, 218 (4th Cir. 2022) (quoting *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006)) (cleaned up). Prejudice and bad faith are more likely present when leave to amend is requested “at later stages of litigation.” *Id.*

The liberal amendment rule in Rule 15(a) is qualified when a scheduling order has been entered. Under Federal Rule of Civil Procedure 16(b), courts should modify scheduling orders “only for good cause.” FED. R. CIV. P. 16(b)(4). Notwithstanding the more lenient standard of Rule 15(a), “after the deadlines provided by a scheduling order

have passed, the good cause standard must be satisfied to justify leave to amend the pleadings.” *Nourison Rug Corp. v. Parvizian*, 535 F.3d 295, 298 (4th Cir. 2008); *accord Moore v. Equitrans, L.P.*, 818 F. App'x 212, 217–18 (4th Cir. 2020) (unpublished) (“The good-cause hurdle of Rule 16(b)(4), which states that a schedule may be modified only for good cause and with the judge's consent, dampens Rule 15(a)(2)’s mandate to freely give leave to amend when justice so requires.”). “[D]iligence” is the “touchstone” of good cause under Rule 16(b). *Faulconer v. Centra Health, Inc.*, 808 F. App'x 148, 152 (4th Cir. 2020) (unpublished). When a moving party knew of the underlying conduct giving rise to a claim but did not promptly raise that conduct, “then the party cannot establish good cause under Rule 16.” *Id.* at 152 & n.1 (collecting cases).

Natera has had a couple of months to evaluate whether it needs to seek leave to amend the complaint based on RaDaR 1.1; it has not done so, and it might never do so. But RaDaR 1.1 discovery is ongoing, and a short extension of the time to file requests to amend the pleadings is therefore appropriate, with a qualification. NeoGenomics represented at the recent hearing that it would produce the SOPs in October, and Natera represented that it would be able to finish its evaluation of the need for any amendment once it had the SOPs. Therefore, Natera may file any motion to amend the complaint no later than November 4, 2024. In view of the particular circumstances here and the prejudice to NeoGenomics from an amendment filed now which could have been filed in August or early September, the need for the amendment must be based, at least in part, on information Natera learned or learns after September 12, 2024, the date of the hearing the Court held on this motion. Natera must file any such motion promptly after learning such

information. Beyond that requirement, any such motion filed before November 4, 2024, will be subject to the standard in Rule 15(a).

It is **ORDERED** that:

1. The Joint Motion for Partial Dismissal and Entry of a Stipulated Permanent Injunction, Doc. 328, is **GRANTED** and an Order and Injunction will be entered separately. This does not resolve all issues in the case.
2. The Motion to Exclude, Doc. 296, is **DENIED** as moot.
3. The Joint Motion to Amend the Scheduling Order, Doc. 324, is **GRANTED** and the Schedule appended to this Order governs further proceedings. The dates in parentheses are calculated based on the expected deadline for providing Notice.
4. Before filing any motion to amend the complaint, Natera **SHALL** provide a copy of the proposed amended complaint to counsel for NeoGenomics and **SHALL** state in the motion whether NeoGenomics consents or objects to the motion to amend. Any such motion **SHALL** address the effect of the amendment on the Schedule.
5. The deadline to support the motion to seal at Doc. 325 is **EXTENDED** to September 26, 2024, to match the deadline in place for the filing of materials to support the motion to seal at Doc. 300. *See* Text Order 09/12/2024.
6. If there are any other matters pending before the Court at the moment beyond the two motions to seal, Docs. 300, 325, the parties **SHALL** immediately notify the case manager.

7. The following scheduling deadlines apply:

Event	Current Date	Proposed Date
Fact Discovery on RaDaR 1.1		ongoing
Deadline to Request Leave to Amend Pleadings	February 16, 2024	November 4, 2024
Interim Status Report per Doc. 326 at 3 n.4	--	February 7, 2025
NeoGenomics to Provide Notice per Doc. 326 at 3.	--	Anticipated March 3, 2025
Substantial Completion of Document Production		4 days after Notice (Friday, March 7, 2025)
Final Infringement Contentions		1 week after Substantial Doc Production (March 14, 2025)
Final Invalidity Contentions		1 week after Substantial Doc Production (March 14, 2025)
Close of Fact Discovery		3 weeks after final infringement contentions (April 4, 2025)
Opening Expert Witness Disclosures on Which Party Bears Burden of Proof (First Round) Served	August 2, 2024	2 weeks after close of fact discovery (April 18, 2025)
Responsive Expert Witness Disclosures Which Opposing Party Bears Burden of Proof (Second Round) Served	August 23, 2024	3 weeks after first round of expert reports (May 9, 2025)
Reply Expert Witness Disclosures (Third Round) Served	September 6, 2024	2 weeks after second round of expert reports (May 23, 2025)
Disclosed Expert Depositions May Begin	September 9, 2024	May 26, 2025
Close of Expert Discovery	September 20, 2024	2 weeks after third round of expert reports (June 6, 2025)

Event	Current Date	Proposed Date
Mediation		No later than June 13, 2025, as scheduled by the Mediator; if unsuccessful, mediator shall not declare impasse but shall schedule another mediation in the late summer
Filing Dispositive Motions and Motions to Exclude Expert Testimony	October 4, 2024	2 weeks after expert discovery closes (June 20, 2025)
Oppositions to Dispositive Motions and Motions to Exclude Expert Testimony	November 1, 2024	2 weeks after opening dispositive motions (July 3, 2025)
Replies to Dispositive Motions and Motions to Exclude Expert Testimony	November 15, 2024	2 weeks after oppositions to dispositive motions (July 18, 2025)
Final Election of 7 Claims by Natera		1 week after replies to dispositive motions (July 25, 2025)
Final Election of 3 Invalidity Arguments Per Claim by NeoGenomics		2 weeks after replies to dispositive motions (August 1, 2025)
Hearing on Dispositive and Daubert motions	December 17, 2024 Subject to the Court's criminal trial schedule	3 weeks after replies to dispositive motions (August 8, 2025) and subject to the Court's criminal trial schedule.
Parties exchange witness lists, deposition designations, and exhibit lists	December 6, 2024	3.5 weeks after replies to dispositive motions (August 13, 2025)
Natera to serve draft Joint Pre-trial Order / cover pleading for Trial Brief, proposed jury instructions, verdict forms, and voir dire questions		3.5 weeks after replies to dispositive motions (August 13, 2025)

Event	Current Date	Proposed Date
Parties provide objections to witness lists, objections and counter-designations to deposition designations, and objections to exhibit lists	December 20, 2024	2 weeks after initial exchange of witness lists, deposition designations, and exhibit lists (August 27, 2025)
NeoGenomics to provide revisions to Joint Pre-trial Order / cover pleading for Trial Brief, proposed jury instructions, verdict forms, and voir dire questions		2 weeks after Natera serves Joint Pre-trial Order / cover pleading for Trial Brief, proposed jury instructions, verdict forms, and voir dire questions (August 27, 2025)
Informational exchange on motions in limine [proposed topics]	January 6, 2025	2 weeks after initial exchange of witness lists, deposition designations, and exhibit lists (August 27, 2025)
Meet and confer regarding motions in limine topics and objections to witness lists, exhibit lists, and deposition designations	January 8, 2025	1 week after informational exchange on motions in limine and exchange of objections to witness lists, objections and counter-designations to deposition designations, and objections to exhibit lists (September 3, 2025)
Mediation	No later than January 15, 2025, as scheduled by the Mediator	No later than September 3, 2025, as scheduled by the Mediator
Meet and confer regarding proposed jury instructions, verdict forms, and voir dire questions	January 17, 2025	1.5 weeks after revisions to proposed jury instructions, verdict forms, and voir dire questions (September 5, 2025)
File opening motions in limine	January 20, 2025	1 week after the meet and confer (September 10, 2025)
File oppositions to motions in limine	January 29, 2025	1 week after filing opening motions in limine (September 17, 2025)

Event	Current Date	Proposed Date
File trial brief (per LR 40.1(c)) and witness lists, exhibit lists, deposition designations, proposed jury instructions, and proposed verdict forms, along with remaining objections to be considered by Court.	January 31, 2025	1.5 weeks after filing opening motions in limine (September 19, 2025)
Pretrial Conference	Week of February 10, 2025 (subject to the Court's availability and subject to adjustment based on the Court's criminal court schedule) and further as needed	Week of September 22, 2025 (subject to the Court's availability and subject to adjustment based on the Court's criminal court schedule) and further as needed
Trial	March 10–14, 2025 (subject to adjustment based on the Court's criminal trial schedule and as needed for resolution of dispositive motions)	October 13-17, 2025 (subject to the Court's availability and subject to adjustment based on the Court's criminal court schedule) and further as needed

SO ORDERED, this the 23rd day of September, 2024.


UNITED STATES DISTRICT JUDGE