

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION**

IN RE: AFLIBERCEPT PATENT LITIGATION	MDL No. 1-24-md-3103-TSK
THIS DOCUMENT RELATES TO:	
REGENERON PHARMACEUTICALS, INC. Plaintiff, v. CELLTRION, INC., Defendant.	No. 1:23-CV-89-TSK
REGENERON PHARMACEUTICALS, INC. Plaintiff, v. CELLTRION, INC., Defendant.	No. 1:24-CV-53-TSK
REGENERON PHARMACEUTICALS, INC. Plaintiff, v. SAMSUNG BIOEPIS, CO., LTD., Defendant.	No. 1:23-CV-94-TSK
REGENERON PHARMACEUTICALS, INC. Plaintiff, v. SAMSUNG BIOEPIS, CO., LTD., Defendant.	No. 1:23-CV-106-TSK
REGENERON PHARMACEUTICALS, INC. Plaintiff, v. FORMYCON AG, Defendant.	No. 1:23-CV-97-TSK

REGENERON PHARMACEUTICALS, INC. Plaintiff, v. AMGEN, INC. Defendant.

No. 1:24-CV-39-TSK

DEFENDANTS' MOTION FOR STATUS CONFERENCE

Defendants Samsung Bioepis, Formycon AG, Celltrion, Inc., and Amgen, Inc. (collectively “Defendants”), through their undersigned counsel, respectfully request a status conference for the parties to this MDL to resolve pending scheduling disputes and set a schedule for the next phases of this case. Regeneron has proposed to delay this case until an indefinite date after the Federal Circuit issues decisions on the appeals of this Court’s preliminary injunction (“PI”) orders, amounting to a *de facto* stay of the proceedings. *See* Ex. A (Email from D. Berl dated August 9, 2024 and Attachment – Regeneron Proposed Schedule). However, a case should continue to advance on the merits in the district court despite a pending appeal of a PI decision. *See, e.g., California v. Azar*, 911 F.3d 558, 583 (9th Cir. 2018) (“We have repeatedly admonished district courts not to delay trial preparation to await an interim ruling on a preliminary injunction.”); *Macon v. Bailar*, 428 F. Supp. 182, 184 (E.D. Va. 1977) (“[A]n appeal from an interlocutory order affecting an injunction does not divest the trial court of jurisdiction to continue with other phases of the case.”).

For instance, in a recent BPCIA case in the District of Delaware, the court denied the patentee’s PI motion, and the patentee promptly appealed to the Federal Circuit. *See Genentech, Inc. v. Amgen Inc.*, No. 18-cv-924-CFC, 2019 WL 3290167 (D. Del. July 18, 2019), *aff’d*, 796 F. App’x 726 (Fed. Cir. 2020). The district court case proceeded on the merits per the court’s scheduling order in parallel with the appellate proceedings. *See* Ex. B (18-cv-924, Dkt. 44, Scheduling Order); *see also* Ex. C (18-cv-924, case docket). Likewise, in another pharmaceutical case, a court in the District of Massachusetts granted the patentee’s PI motion, and the defendant promptly appealed to the

Federal Circuit. *Momenta Pharms., Inc. v. Amphastar Pharms., Inc.*, 882 F. Supp. 2d 184 (D. Mass. 2011), *vacated and remanded*, 686 F.3d 1348 (Fed. Cir. 2012). The district court entered a scheduling and discovery order shortly after its PI decision, thus requiring the case to proceed on the merits at the same time as the defendant's appeal of the PI order. *See* Ex. D (11-cv-11681, Dkt. 139, Scheduling Order and Discovery Plan). These cases are just two of many examples of district courts "keeping with the general proposition that an appeal from the denial or granting of a preliminary injunction should not ordinarily delay the final trial of the case on its merits." *United States v. Lynd*, 321 F.2d 26, 28 (5th Cir. 1963).

Advancing the case by entering a scheduling order with key early deadlines while the PI appeals are pending is appropriate here. Regeneron has asserted dozens of patents against each defendant in addition to the '865 patent that is the subject of the PI appeal, covering a broad range of different technologies. In total, there are over 50 different patents asserted by Regeneron across this MDL. There is no reason to delay moving the case forward until an appeal decision is rendered on just one of the asserted patents. A critical early step in the litigation that should not be delayed is for Regeneron to narrow the case to a reasonable number of asserted patents and claims. Only through such narrowing can the parties reasonably conduct discovery. Moreover, narrowing will allow the parties to efficiently proceed through claim construction, and will avoid burdening the Court with the task of resolving unnecessary claim construction issues.

For these reasons, Defendants respectfully request a status conference to discuss scheduling issues.

Dated: September 13, 2024

Respectfully submitted,

/s/ Max C. Gottlieb

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CERTIFICATE OF SERVICE

I, Max C. Gottlieb, hereby certify that on September 13, 2024, I caused a true and correct copy of the foregoing **Defendants' Motion for Status Conference** to be electronically filed with the Clerk of the Court using the Court's CM/ECF system, which has notified and provided service of such filing to all counsel of record in the above-captioned case.

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