

**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.

SAMSUNG BIOEPIS, CO., LTD.,

Defendant.

No. 1:23-CV-94-TSK

REGENERON PHARMACEUTICALS, INC.

Plaintiff,

v.

FORMYCON AG,

Defendant.

No. 1:23-CV-97-TSK

REGENERON PHARMACEUTICALS, INC.

Plaintiff,

v.

SAMSUNG BIOEPIS, CO., LTD.,

Defendant.

No. 1:23-CV-106-TSK

**DEFENDANTS CELLTRION, INC.'S, FORMYCON AG'S AND
SAMSUNG BIOEPIS, CO., LTD.'S PROPOSED CASE MANAGEMENT ORDER**

Pursuant to Paragraph 3 of the Court’s Pretrial Order #1: Initial Scheduling Conference (ECF No. 24),¹ Defendants Celltrion, Inc. (“Celltrion”), Formycon AG (“Formycon”), and Samsung Bioepis Co., Ltd. (“SB”) (collectively, “PI Defendants”) provide the following joint proposal concerning case management, the proposed schedule, and counsel structure.²

I. PROPOSED CASE SCHEDULE

PI Defendants respectfully request the entry of a scheduling order consistent with the schedule below that provides for the phased narrowing of asserted patents and claims by Regeneron, with the cases ready for trial in or around April 2025, roughly one year from the date of the initial MDL conference. PI Defendants propose this schedule subject to and without prejudice to their pending Motions to Dismiss for lack of personal jurisdiction.

Event	PI Defendants’ Proposed Deadline
Regeneron to reduce number of patents asserted against each defendant (excluding Mylan) to no more than eight, at least six of which must be common to all non-Mylan defendants, and reduce total number of claims asserted against each non-Mylan defendant to no more than 40	June 20, 2024
Exchange of proposed claim terms for construction	July 11, 2024
Exchange of proposed constructions and intrinsic support	July 25, 2024
Submission of joint claim construction chart	August 8, 2024
Opening <i>Markman</i> briefs	August 29, 2024
Responsive <i>Markman</i> briefs	September 19, 2024
<i>Markman</i> hearing	Week of October 7, 2024, subject to the Court’s availability
Substantial completion of document production	October 3, 2024
Deadline to amend pleadings	November 7, 2024
Close of fact discovery	November 20, 2024

¹ All ECF cites are to MDL No. 1:24-md-03103-TSK, unless otherwise indicated.

² Counsel for PI Defendants have appeared specially for the limited purpose of contesting jurisdiction, and PI Defendants have pending motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(2). This submission, which is limited to procedural aspects of the case, is being submitted pursuant to Court order.

Event	PI Defendants' Proposed Deadline
Regeneron to narrow total number of claims asserted against each non-Mylan defendant to no more than 20 from no more than four patents, at least three patents and 15 claims must be common to all non-Mylan defendants	November 27, 2024
Opening expert reports on issues for which the party bears the burden	December 19, 2024
Responsive expert reports	January 23, 2025
Reply expert reports	February 13, 2025
Close of expert discovery	March 13, 2025
Regeneron to narrow total number of claims asserted against each non-Mylan defendant to no more than 10 from no more than three patents, at least two patents and six claims must be common to all non-Mylan defendants	March 20, 2025
Motions for summary judgment (if any)	March 27, 2025
Motions <i>in limine</i> and <i>Daubert</i> motions	March 27, 2025
Proposed Joint Pretrial Order	April 17, 2025

A vital feature of PI Defendants' proposal is that Regeneron be required to narrow the number of asserted patents and claims at key stages of the litigation. Regeneron has asserted 39 patents against Formycon, 38 patents against Celltrion, and 52 patents against SB. Only some of the patents are commonly asserted against all of the MDL defendants, while others are uniquely asserted against just one defendant. In total, Regeneron has asserted more than 60 patents containing over 1,000 claims across all cases against all defendants in this MDL. This is an unmanageable number of asserted patents and claims, and it is unnecessary to prolong their time in the case given that many of the patents are within the same family and claim overlapping subject matter. And, Regeneron lacks any good-faith basis to assert a number of the asserted patents. Scheduling orders narrowing the number of asserted patents and claims are common in BPCIA litigations to promote efficient case management, discovery, and resolution. *See, e.g., Genentech, Inc., et al. v. Amgen Inc.*, No. 17-1407-GMS (D. Del.), ECF No. 106 (adopting scheduling order that required narrowing of the patents-in-suit and asserted claims of those patents).

At Regeneron's request, Regeneron's patent infringement suits against Formycon, Celltrion, SB, and two other defendants were centralized before this Court. Although there were more than 60 patents across all the individual suits, the MDL was granted in large part because Regeneron highlighted there were 13 overlapping patents across all cases. *See* MDL No. 3103, D.I. 43 (authorizing MDL because "Regeneron asserts a common set of thirteen patents in every action, and every patent asserted against Amgen also is asserted against at least one of the Northern District of West Virginia defendants"). Regeneron should keep to its word; this MDL should focus on a reasonable subset of those patents, presumably focused on the 13 overlapping patents that Regeneron identified to the MDL panel, while also allowing for a small set of additional patents specific to each defendant.

Subject to the Court's availability, there is no reason why these centralized cases could not be trial-ready approximately a year after the initial MDL scheduling conference. Such a schedule is consistent with the one proposed by Regeneron and adopted by the Court in the *Mylan* case, where trial concluded less than a year from the filing of the complaint. Moreover, Regeneron has already identified and asserted what it presumably believes to be its strongest patents against each PI Defendant in its preliminary injunction motions. The fact that the parties have already conducted limited discovery on these patents is another reason why these cases can be ready for trial in approximately one year. Further, prompt resolution of these cases, with phased narrowing of asserted patents, ensures that PI Defendants, who have already spent the last several months litigating Regeneron's PI motion, are not stuck in time-consuming, and needlessly complex and expensive, patent litigation.

PI Defendants met and conferred with Regeneron regarding submission of a proposed schedule on May 7, 2024. At that time, counsel for Regeneron said it did not believe a case

schedule should be entered until after the Court issued its decision on Regeneron's preliminary injunction motion. PI Defendants said that they planned to propose a case schedule and discovery plan, because the outcome of the preliminary injunction motion will not impact the remainder of the litigation. The afternoon of May 9, 2024, Regeneron informed PI Defendants that Regeneron also planned to propose a discovery plan and schedule in its May 10 filing. Due to the timing, PI Defendants were not able to come to an agreement with Regeneron on a proposed case schedule and discovery, but will meet and confer with Regeneron before the May 17 initial scheduling conference, and will notify the Court regarding any areas of agreement.

II. DISCOVERY LIMITS

PI Defendants believe that the Court should order limits with respect to written discovery, fact depositions, custodians for electronically stored information ("ESI"), other document discovery, and claim construction. PI Defendants respectfully submit, however, that the appropriate discovery limits depend on the number of patents and claims at issue in the case and the timing of any narrowing. PI Defendants will work with Regeneron to attempt to come to agreement on these discovery limits once a case schedule is entered.

III. COUNSEL STRUCTURE

The Court's Pretrial Order #1 requests counsels' recommendations for three "defendants' liaison counsel." PI Defendants respectfully request that the Court allow defendants to nominate five liaison counsel so that each of the MDL defendants can be represented. PI Defendants understand that the other two defendants (Mylan and Amgen) join in this request and that Regeneron does not oppose it.

Dated: May 10, 2024

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Date: May 10, 2024

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on May 10, 2024, I caused a true and correct copy of the foregoing Defendants Proposed Case Management Order to be served on counsel of record for Plaintiff.

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