

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.

Civil Action Nos.: 1:23-cv-89-TSK &
1:24-cv-53-TSK

**REPLY IN SUPPORT OF CELLTRION, INC.’S MOTION FOR A STATUS
CONFERENCE, AND NOTICE OF PARTIAL ADOPTION AND JOINDER OF
SAMSUNG BIOEPIS, CO., LTD’S SCHEDULING MOTION [ECF No. 478]**¹

With the Federal Circuit’s recent affirmance that Amgen is not preliminary enjoined, *see* ECF No. 498, every pending appeal from a preliminary injunction motion in this MDL is now resolved. Regeneron’s desire to wait until “resolution of the pending appeals in the MDL action,” prior to holding a status conference is now effectively moot. The sole remaining undecided appeal — that in the *Mylan* member case — concerns an action in a very different procedural posture. There the parties have already conducted fulsome pre-trial discovery and a full trial on the merits

¹ ECF Numbers in this motion reference the MDL docket, identified as case number 1:24-md-3103-TSK.

of the key asserted patents. In contrast, pre-trial proceedings in the *Celltrion* and other member cases have yet to commence. The *Celltrion* and other member cases should be allowed to proceed immediately, so that the parties can at least begin the pre-trial exchanges that Mylan and Regeneron have already completed. Should Mylan and Regeneron require limited additional discovery from each other, there will be ample time for these supplemental exchanges after the *Mylan* appeal is decided. No good cause remains to further delay the status conference and the ability of the parties to make progress on discovery.²

Further delay would significantly prejudice Celltrion. The amount of time left for the parties to litigate U.S. Patent No. 11,084,865 (“the ’865 patent”) before it expires on June 14, 2027, is vanishing rapidly. Celltrion should be permitted a fair and timely opportunity to have a trial on the merits of its invalidity defense concerning the ’865 patent as soon as possible. Regeneron’s request to delay a status conference until a date uncertain is nothing more than a tactic to convert this Court’s preliminary injunction into a *de facto* permanent injunction without a trial on the merits. Justice delayed here would indeed be justice denied. In its decision in the *Celltrion* case, the Federal Circuit expressly acknowledged that its decision upholding the preliminary injunction was not an adjudication of the merits of Celltrion’s defense, and that Celltrion should have the “opportunity to fully develop” the record and present that defense at trial. *See, Regeneron Pharms. Inc. v. Mylan Pharms. Inc. et al.*, No. 24-2058, ECF No. 62, at 10 (Fed. Cir. Mar. 5, 2025). Further

² Similarly, the trailing case of *Sandoz* does not justify further delay in the requested status conference. In fact, in transferring the *Sandoz* case to West Virginia to be part of the MDL, the MDL panel expressly acknowledged that the case “may trail those in the [earlier filed] West Virginia actions” and yet “still . . . provide efficiencies for the parties and preserve judicial resources.” *See* 24-md-3103, Dkt. 1 at 3. But placing Sandoz on equal tracks with Celltrion (and the other member defendants) despite the vastly different statuses of the cases at this point lacks justification, unfairly prejudices Celltrion’s interests, and defeats the efficiencies contemplated by the MDL panel. *Id.*

delay would deprive Celltrion of this opportunity.

Regeneron is being inconsistent by both opposing an immediate status conference and yet claiming that Celltrion is seeking to deprive it of the opportunity to obtain discovery. Opp. at 5-6. Celltrion is not offering a “gambit” to force Regeneron to abandon viable claims. Opp. at 5. Regeneron knows full well what its strongest patents and claims against Celltrion are. It received the information needed to narrow its case to its strongest patent claims during the preliminary injunction phase of the case. Indeed, it already narrowed its case during that phase and has offered no reason why that narrowing must be redone now. But even if Regeneron is entitled to further discovery and further narrowing, that merely underscores that the parties should not waste any more time and get started on that now. Even if Regeneron’s concern about abandonment had merit—and it does not—that concern is properly addressed at the status conference that Regeneron continues to resist. An immediate status conference and the commencement of pre-trial discovery would allow the parties to make progress now and avoid a needless, prejudicial delay of trial. Celltrion’s proposed approach is a standard and reasonable request that has been adopted in other cases to promote efficient case management, discovery, and resolution of complex patent cases. *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).

This case has been pending for well over a year. Regeneron now has had the benefit of a preliminary injunction and thus now profits from delay. But preliminary injunction is just that – preliminary. The ’865 patent expires in 2027, and it is unfair to keep the MDL Defendants off the market until that patent’s expiry by denying the MDL Defendants an opportunity to begin pre-trial discovery now. Progressing forward with the case to the merits in an efficient, manageable,

and appropriate manner, is just and proper. Celltrion respectfully requests that the Court schedule a status conference as soon as practicable to allow the cases to proceed toward trial, and not wait until the appeal in the Mylan case is resolved.

Date: March 21, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on the 21st day of March 2025, service of the foregoing document was made to counsel of record by CM/ECF filing.

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