UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NOVARTIS PHARMA AG; NOVARTIS PHARMACEUTICALS CORPORATION; and NOVARTIS TECHNOLOGY LLC,

Plaintiffs,

-v-

REGENERON PHARMACEUTICALS, INC.,

Defendant,

1:20-CV-690
'631 Patent case

REGENERON PHARMACEUTICALS, INC.,

Counter Claimant,

-v-

NOVARTIS PHARMA AG; NOVARTIS PHARMACEUTICALS CORPORATION; and NOVARTIS TECHNOLOGY LLC,

Counter Defendants,

REGENERON PHARMACEUTICALS, INC.,

Plaintiff,

-v-

1:21-CV-1066
Antitrust case

NOVARTIS PHARMA AG; NOVARTIS TECHNOLOGY LLC; NOVARTIS PHARMACEUTICALS CORPORATION; and VETTER PHARMA INTERNATIONAL GMBH,

Defendants.

APPEARANCES:	OF COUNSEL:
BOND SCHOENECK & KING, PLLC SYRACUSE Attorneys for Novartis Pharma AG Novartis Pharmaceuticals Corporation, and Novartis Technology LLC One Lincoln Center Syracuse, New York 13202	GEORGE R. McGUIRE, ESQ. LOUIS ORBACH, ESQ.
GOODWIN, PROCTER LAW FIRM NEW YORK OFFICE Attorneys for Novartis Pharma AG Novartis Pharmaceuticals Corporation, and Novartis Technology LLC The New York Times Building 620 Eighth Avenue New York, New York 10018	CALVIN E. WINGFIELD, ESQ.
GOODWIN, PROCTER LLP Attorneys for Novartis Pharma AG Novartis Pharmaceuticals Corporation, and Novartis Technology LLC Exchange Place 100 Northern Avenue Boston, Massachusetts 02210	MOLLY GRAMMEL, ESQ.
WEIL GOTSHAL & MANGES LLP Attorneys for Regeneron Pharmaceuticals, Inc. 767 Fifth Avenue New York, New York 10153	ANISH R. DESAI, ESQ. ELIZABETH WEISWASSER, ESQ. ERIC SHAUN HOCHSTADT, ESQ. JESSICA L. FALK, ESQ. JOHN REN, ESQ.

BARCLAY DAMON LLP-SYRACUSE Attorneys for Regeneron Pharmaceuticals, Inc. Barclay Damon Tower 125 East Jefferson Street Syracuse, New York 13202	DOUGLAS J. NASH, ESQ. JOHN D. COOK, ESQ.
WEIL GOTSHAL & MANGES LLP Attorneys for Regeneron Pharmaceuticals, Inc. 2001 M Street, Northwest-Suite 600 Washington, DC 20036	CHRISTOPHER PEPE, ESQ. MATTHEW SIEGER, ESQ. ROBERT T. VLASIS, III, ESQ.
HESLIN, ROTHENBERG LAW FIRM Attorneys for Vetter Pharma International GMBH 5 Columbia Circle Albany, New York 12203	SUSAN E. FARLEY, ESQ. TEIGE P. SHEEHAN, ESQ.
MARSHALL, GERSTEIN & BORUN, LLP Attorneys for Vetter Pharma International GMBH 6300 Willis Tower 233 S. Wacker Drive Chicago, Illinois 60606	BENJAMIN T. HORTON, ESQ. JULIANNE M. HARTZELL, ESQ.
DAVID N. HURD United States District Judge	

MEMORANDUM-DECISION and ORDER

I. INTRODUCTION

On June 19, 2020, pharmaceutical companies Novartis Pharma AG, Novartis Pharmaceuticals Corporation, and Novartis Technology LLC (together "Novartis") filed a complaint (the "'631 Patent case") in this district alleging patent infringement against rival Regeneron Pharmaceuticals, Inc.

("Regeneron"). Essentially, Novartis claims that it has a valid patent for syringes which come pre-filled with a certain medication used to treat degenerative eye disease. By extension, Novartis takes issue with Regeneron's introduction of a competing prefilled syringe—designed to treat the same disease—into the market notwithstanding its patent.

On July 17, 2020, Regeneron fired back with a complaint of its own, alleging four antitrust claims and an additional claim for tortious interference with a contract (the "Antitrust case"). In addition to Novartis, Regeneron also directed some of these claims at Vetter Pharma International GMHB, a pharmaceutical supply chain provider whose niche in the medical marketplace includes filling Novartis's—and formerly Regeneron's—syringes.

According to Regeneron, Vetter and Novartis conspired together to circumvent a binding contract giving Regeneron an ownership interest in any of Vetter's innovations. At the same time, Regeneron claims that Vetter and Novartis defrauded the Patent and Trademark Office ("PTO") to secure for Novartis a stranglehold on the market for prefilled syringes designed to treat degenerative eye disease.

There are three separate pending motions in these two cases. First, in the '631 Patent case, Novartis and Regeneron have submitted their opening claim construction briefs in advance of a potential hearing as contemplated by *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996). Second, in

the Antitrust case, Novartis and Vetter have both moved to dismiss Regeneron's complaint against them in its entirety under Federal Rule of Civil Procedure ("Rule") 12(b)(6). And third, in both cases, Regeneron has moved for a stay in proceedings while the PTO conducts an *inter partes* review of the validity of Novartis's patent. All three motions, having been fully briefed, will now be decided on the submissions and without oral argument.

II. BACKGROUND

At their core, these two cases are about three different drugs: EYLEA, made by Regeneron, and LUCENTIS and BEOVU, both made by Novartis.[1] *Regeneron Pharms., Inc. v. Novartis Pharma AG*, 1:21-CV-1066, Dkt. 87 ("Antitrust Compl."), ¶ 5. All three drugs are designed to inhibit the body's production of vascular endothelial growth factor ("VEGF"), a naturally occurring protein that erodes vision if overproduced, and in particularly extreme cases can cause blindness. *Id.* ¶¶ 5-6.

EYLEA, LUCENTIS, and BEOVU each need to be injected directly into the eye regularly to do their job as "anti-VEGF" agents. Antitrust Compl. ¶ 6. Traditionally, like most injectable liquids, EYLEA, LUCENTIS,

[1] For the purposes of Novartis and Vetter's motions to dismiss under Rule 12(b)(6), the Court takes the facts in Regeneron's complaint as true. The Court notes that in addition to the redacted First Amended Complaint on the docket, Regeneron has also filed a "clean" version of that document under seal. The Court has consulted the clean version where necessary but will cite to the official version.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.