

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF WEST VIRGINIA

Regeneron Pharmaceuticals, Inc.

Plaintiff,

VS.

CIVIL ACTION NO.

1:22-cv-61

Mylan Pharmaceuticals, Inc., and

Biocon Biologics,

Volume 7

Defendants.

- - -

Proceedings had in the bench trial of the above-styled action on June 21, 2023, before Honorable Thomas S. Kleeh District Judge, at Clarksburg, West Virginia.

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1 Wednesday Afternoon Session,
2 June 21, 2023, 9:00 a.m.

3 - - -

4 THE COURT: Day seven, I think, we convene for trial.
5 Counsel is present. Dr. MacMichael is on the stand. I believe
6 we're ready for redirect.

7 Is that correct, Counsel?

8 Madam Court Reporter is ready. You may proceed.

9 MR. SALMEN: Yes, Your Honor. For the first portion
10 of my redirect, I'm probably going to have to get into some
11 information that has been designated confidential. So pursuant
12 to your previous order, we ask for a sealed courtroom.

13 THE COURT: Understood.

14 In an effort to get everyone their steps in early
15 this morning, those of you not permitted to be here under the
16 Court's protective order, if I could ask you to step out. We
17 would certainly appreciate it.

18 We'll also ask the court security, once those folks
19 have vacated the premises, to seal our courtroom, please.
20 Thank you so much.

21 (The following proceedings (1527/23 to 1533/12) were
22 had under seal, and are filed under separate cover.)

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12 (Courtroom unsealed.)

13 THE COURT: Welcome back, everybody.

14 Counsel, you may proceed.

15 MR. SALMEN: Thank you, Your Honor.

16 BY MR. SALMEN:

17 Q. Dr. MacMichael, do you recall Mr. Berl asking you the
18 question "Polysorbate in Claim 1 is being used as a
19 surface-active agent to prevent aggregation and denaturation?"

20 A. I don't recall the specific question.

21 Q. That appears at trial transcript page 1455. Why
22 don't we put that on the screen to refresh your recollection.

23 I'll give you a moment to read that.

24 A. Yes.

25 Q. Do you recall this question?

1 A. Yes.

2 Q. Let's take a look at the '865 patent Claim 1, please.

3 Claim 1 of the '865 patent does not require
4 polysorbate, does it?

5 A. It does not call out polysorbate.

6 Q. Dr. MacMichael, you were asked about Dr. Rabinow's
7 testimony. And to refresh your recollection, let's pull up
8 page 1482 to 1483.

9 Do you recall being shown this testimony from
10 Dr. Rabinow?

11 A. Yes, I do.

12 Q. And you see here Dr. Rabinow was being asked about
13 optimizing the stability of a protein formulation, a single
14 formulation, right?

15 A. Yes.

16 Q. Were you asked to provide an opinion regarding
17 whether the patent enables just a single formulation or whether
18 the patent enables the full scope of the universe of
19 formulations covered by the asserted claims?

20 A. Yes, I was asked.

21 Q. Were you asked whether the patent enables a single
22 formulation or whether the patent enables the full scope of
23 formulations covered by the asserted claims?

24 A. I apologize. I can't recall the specificity of that
25 question, but I can answer the question. But I believe it does

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