

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

REGENERON PHARMACEUTICALS, INC.,

Plaintiff,

v.

MYLAN PHARMACEUTICALS INC.,

Defendant.

Case No. 1:22-cv-00061-TSK

**Claim Construction Hearing:
January 6, 2023, 10:00 am**

JOINT CLAIM CONSTRUCTION CHART

Pursuant to the Court’s Scheduling Order (ECF No. 87), Plaintiff Regeneron Pharmaceuticals, Inc. (“Regeneron”) and Defendant Mylan Pharmaceuticals Inc. (“Mylan”) submit the following Joint Claim Construction Chart to assist with the Court’s preparation for the hearing scheduled for January 6, 2023.

I. JOINT POSITION ON CLAIM CONSTRUCTION BRIEFING

The Court’s Scheduling Order directs the parties to submit their positions concerning the length of any claim construction briefing. The parties have conferred and respectfully submit that their respective opening and responsive claim construction briefs be limited to 30 pages.

II. CLAIM CONSTRUCTION DISPUTES & SUPPORTING INTRINSIC EVIDENCE

The parties request that the Court resolve the following claim construction disputes.

| Claim Term [Requesting Party] | Regeneron's Proposed Construction and Intrinsic Evidence ¹ | Mylan's Proposed Construction and Intrinsic Evidence ^{2, 3} |
|--|---|--|
| <p>Best Corrected Visual Acuity ('601 patent, claims 5-6, 15-16, 23-24, and 31-32; '572 patent, claims 2, 3, 8, 10, 17, 21, and 30)</p> <p>[Regeneron]</p> | <p>the best visual acuity that can be achieved with the use of a corrective lens</p> <p>'572 patent, 8:32-36, 9:26-27, 9:50-53, 10:28-30, 10:50-57, 12:23-27, Table 1.2⁴</p> | <p>Plain and ordinary meaning:</p> <p><i>Best Corrected Visual Acuity (BCVA), measured in letters, a clinical trial endpoint / measurement</i></p> <p>The entire specification for the 601 patent, including but not limited to: References Cited; Related Applications; Examples (in particular, Examples 1, 3-4); Claims; and, in particular: 7:26-45; 8:23-27; 9:18-19; 9:49-51; 10:26-28; 12:33-40.</p> <p>The entire prosecution file history for the 601 patent, including but not limited to: RGN-EYLEA-MYLAN-00001666-1667; RGN-EYLEA-MYLAN-00002482-2483; RGN-EYLEA-MYLAN-00002484-2493; RGN-EYLEA-MYLAN-</p> |

¹ Regeneron disagrees with Mylan's characterizations in footnotes 3 and 7 of the parties' process for identifying terms, exchanging preliminary constructions, and preparing this submission and its allegations of waiver.

² Mylan reserves all rights to assert that the claims of the Asserted Patents are invalid under 35 U.S.C. § 112 as indefinite and/or lacking enablement and/or lacking written description. Nothing in this Joint Claim Construction Chart shall be interpreted as a concession by Mylan that the claim terms identified herein satisfy the 35 U.S.C. § 112 requirements.

³ Mylan reserves all rights to argue that Regeneron waived the opportunity to have the Mylan Proposed Terms construed for failure to present an actual construction of each term beyond their statement that each be afforded its "Plain and ordinary meaning in view of the claims and specification." Mylan requested, but Regeneron refused to provide, explanations of what Regeneron considers to be the "plain and ordinary meaning" of each disputed claim term.

⁴ Throughout this document, to the extent a disclosure is cited in the '572 or '601 patents, the equivalent disclosure in the other patent is also incorporated herein.

| Claim Term [Requesting Party] | Regeneron’s Proposed Construction and Intrinsic Evidence ¹ | Mylan’s Proposed Construction and Intrinsic Evidence ^{2, 3} |
|---|---|--|
| | | <p>00004636; RGN-EYLEA-MYLAN-00005312-5313; RGN-EYLEA-MYLAN-00005370; RGN-EYLEA-MYLAN-00005433-5434; RGN-EYLEA-MYLAN-00005754-5755; RGN-EYLEA-MYLAN-00002494-4635; RGN-EYLEA-MYLAN-00006349; RGN-EYLEA-MYLAN-00006811-6812.</p> <p>The entire specification for the 572 patent, including but not limited to: References Cited; Related Applications; Examples (in particular, Examples 1, 3-4); Claims; and, in particular: 8:32-36; 9:26-27; 10:28-30.</p> <p>The entire prosecution file history for the 601 and 572 patent, including but not limited to: RGN-EYLEA-MYLAN-00016655-17043.</p> <p>The entire record for <i>Inter Partes</i> Review Nos. IPR2021-00880 (U.S. Patent No. 9,669,069), IPR2021-00881 (U.S. Patent No. 9,254,338), IPR2022-01225 (U.S. Patent No. 10,130,681), IPR2022-01226 (U.S. Patent No. 10,888,601), IPR2022-01524 (U.S. Patent No. 11,253,572).</p> |
| <p>chemically defined medium (CDM) (’715 patent, claims 1, 15, and 16; ’280 patent, claims 1 and 5; ’532 patent, claims 1 and 19)</p> | <p>a synthetic growth medium in which the identity and concentration of all the ingredients are defined</p> | <p><i>a synthetic growth medium in which the identity and concentration of all the ingredients are defined and does not contain bacterial, yeast, animal, or plant extracts or</i></p> |

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| [Regeneron] | '715 patent, 30:44-31:5. ⁵ | <p><i>hydrolysates, animal serum, or plasma</i></p> <p>The entire specification for the 715 patent,⁶ including but not limited to: References Cited, Related Applications, Title, Abstract, Figures, Examples (cols. 98-146), Asserted Claims, and, in particular, the following: Figs. 5-8, 12A-12C, 26-31; 2:3-3:32; 5:51-6:28; 7:9-20; 17:58-64; 21:41-24:21; 24:49-29:3; 29:38-30:24; 30:44-31:48; 55:24-37; 58:63-60:57; 62:43-64:27; 69:26-76:63; 93:41-94:53.</p> <p>The entire specification for the 280 patent, including but not limited to: Related Applications, Title, Abstract, Figures, Examples (cols. 97-142), Asserted Claims, and, in particular, the following: Figs. 5-8, 12A-12C, 26-31; 1:65-3:28; 5:47-6:24; 7:5-16; 15:26-33; 19:9-21:55; 22:15-26:40; 27:6-58; 28:10-29:14; 53:61-54:7; 57:41-59:33; 60:50-63:4; 68:4-75:40; 92:19-93:30.</p> <p>The entire specification for the 532 patent, including but not limited to: Related Applications, Title, Abstract, Figures,</p> |

⁵ Throughout this document, to the extent a disclosure is cited in the '715, '280, or '532 patents, the equivalent disclosures in the other patents are also incorporated herein.

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|----------------------------------|---|--|
| | | <p>Examples (cols. 98-146), Asserted Claims, and, in particular, the following: Figs. 5-8, 12A-12C, 26-31; 2:5-3:36; 5:55-6:32; 7:13-23; 17:42-48; 21:25-24:4; 24:32-28:57; 29:24-30:9; 30:28-31:33; 55:6-19; 58:44-60:36; 62:22-64:6; 69:6-76:40; 93:19-94:30.</p> <p>The entire prosecution file history for the 715, 280 and 532 patents, including but not limited to RGN-EYLEA-MYLAN-00024664-693; RGN-EYLEA-MYLAN-00024866-896; RGN-EYLEA-MYLAN-00025995-6097; RGN-EYLEA-MYLAN-00026848-912; RGN-EYLEA-MYLAN-00026920-7029; RGN-EYLEA-MYLAN-00027425-634; RGN-EYLEA-MYLAN-00027635-671; RGN-EYLEA-MYLAN-00027672-691; RGN-EYLEA-MYLAN-00029579-607; RGN-EYLEA-MYLAN-00029780-810; RGN-EYLEA-MYLAN-00030829-931; RGN-EYLEA-MYLAN-00031197-306; RGN-EYLEA-MYLAN-00031310-374; RGN-EYLEA-MYLAN-00031691-900; RGN-EYLEA-MYLAN-00031984-020; RGN-EYLEA-MYLAN-00032021-040; RGN-EYLEA-MYLAN-00032839-861; RGN-EYLEA-MYLAN-00033395-417; RGN-EYLEA-MYLAN-00033583-609; RGN-EYLEA-MYLAN-00033643-646</p> <p>U.S. Patent No. 11,312,936</p> |

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