

Argall, Arthur

From: Fletcher, Thomas
Sent: Monday, December 5, 2022 2:22 PM
To: 'Neil B. McLaughlin'; Gordon Copland; 'sruby@cdkrlaw.com'; David Pogue; Berl, David; Oberwetter, Ellen; Gregory, Teagan; Jordan, Nicholas; Kayali, Kathryn; Argall, Arthur; Mahaffy, Shaun; Pan, Adam; Trask, Andrew; Bernal Anderson, Haylee; Douglass, Sean; Griffin, Renee
Cc: Eric R. Hunt; Jamie O'Brien; Heinz J. Salmen; Jeff A. Marx; Katie A. Boda; Thomas H. Ehrich; AJ Varon; Steven J. Birkos; Scott Beall; Jake R. Ritthamel; Lauren M. Lesko; William A. Rakoczy
Subject: Eylea: Correspondence re: Claim Construction Depositions

Neil,

There is no reason you should be surprised by our request. We discussed the possibility of such depositions while preparing the Joint Claim Construction Statement. We proposed stipulating that neither side would submit expert declarations; you declined to do so. In connection with deleting that proposed stipulation, I told you to find some dates for the deposition of any such witness. It appears you decided not to do so.

But it sounds like you're willing to make these witnesses available for deposition after responsive briefing. If that is correct, and to avoid prejudice to the party taking the deposition, there will need to be a mechanism for that party to submit a short brief addressing their testimony to the Court. We think it would make sense for such a brief, no more than ten pages long, to be filed by Tuesday, January 3. To make that possible, we should agree to make witnesses who submit an expert declaration available for deposition between December 19 and December 23. Please confirm your agreement, and we'll prepare a stipulation. Otherwise, we may have to seek relief expeditiously for Mylan's refusal to make its declarants available before the due date for responsive briefs. As for your question about whether Regeneron will be submitting any expert testimony with its responsive brief, we are considering it.

Regards,

Tom

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From: Neil B. McLaughlin <NMcLaughlin@rmmslegal.com>
Sent: Friday, December 2, 2022 7:59 PM
To: Fletcher, Thomas <TFletcher@wc.com>; Gordon Copland <Gordon.Copland@Steptoe-Johnson.com>; 'sruby@cdkrlaw.com' <sruby@cdkrlaw.com>; David Pogue <drpogue@cdkrlaw.com>; Berl, David <DBerl@wc.com>; Oberwetter, Ellen <EOberwetter@wc.com>; Gregory, Teagan <TGregory@wc.com>; Jordan, Nicholas <njordan@wc.com>; Kayali, Kathryn <KKayali@wc.com>; Argall, Arthur <aargall@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Pan, Adam <apan@wc.com>; Trask, Andrew <atrank@wc.com>; Bernal Anderson, Haylee <HBernal@wc.com>; Douglass, Sean <sdouglass@wc.com>; Griffin, Renee <rgriffin@wc.com>; Hunt, Eric R. <ehunt@wc.com>; O'Brien, Jamie <jobrien@wc.com>; Salmen, Heinz J. <hsalmen@wc.com>; Marx, Jeff A. <jmarx@wc.com>; Boda, Katie A. <kboda@wc.com>; Ehrich, Thomas H. <tehrich@wc.com>; Varon, AJ <avaron@wc.com>; Birkos, Steven J. <sbirkos@wc.com>; Beall, Scott <sbeall@wc.com>; Ritthamel, Jake R. <jritthamel@wc.com>; Lesko, Lauren M. <llesko@wc.com>; Rakoczy, William A. <wrakoczy@wc.com>

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Subject: RE: Regeneron v. Mylan, No. 22-cv-61 Motion to Seal Mylan Opening Claim Const. Brief and Attachments

Tom,

We are surprised by your request for expert deposition dates before the responsive Markman briefs are due. Your reliance on the briefing schedule to demand deposition dates next week is equally surprising, given that (1) Regeneron did not allocate time in its proposed schedule, which the Court has adopted, for the taking of expert depositions between opening and responsive briefs; (2) Regeneron never indicated during our multiple claim construction meet and confers (wherein we made clear that Mylan was considering expert testimony) that you intended to request such mid-briefing depositions; and (3) Regeneron waited nearly 48 hours before making it known that it would demand depositions as early as next week. Regeneron's schedule for this matter provides only two weeks between opening and responsive briefs but over three weeks between responsive briefs and the hearing. Clearly, all expert depositions were intended to proceed during that latter window, not now. Otherwise Mylan will be prejudiced (yet again) with your gamesmanship, by not providing Mylan the opportunity to address Regeneron's anticipated expert(s)' testimony in Mylan's responsive brief. Regeneron should have considered as much before opting to strategically withhold its experts' opinions until the 15th. If Regeneron will not be providing expert declarations with its responsive brief, please state as much.

In the meantime, we are evaluating Dr. Jungbauer's and Dr. MacMichael's availability for the period between 12/15 and 1/6, as contemplated by the Scheduling Order.

Regards,
Neil

NEIL B. MCLAUGHLIN PH.D. | PARTNER

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-----Original Message-----

From: Fletcher, Thomas <TFletcher@wc.com>

Sent: Thursday, December 1, 2022 2:14 PM

Pogue <drpogue@cdkrlaw.com>; Berl, David <DBerl@wc.com>; Oberwetter, Ellen <EOberwetter@wc.com>; Gregory, Teagan <TGregory@wc.com>; Jordan, Nicholas <njordan@wc.com>; Kayali, Kathryn <KKayali@wc.com>; Argall, Arthur <aargall@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Pan, Adam <apan@wc.com>; Trask, Andrew <atrask@wc.com>; Bernal Anderson, Haylee <HAnderson@wc.com>; Douglass, Sean <SDouglass@wc.com>; Griffin, Renee <rgriffin@wc.com>

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Subject: RE: Regeneron v. Mylan, No. 22-cv-61 Motion to Seal Mylan Opening Claim Const. Brief and Attachments

Counsel,

Please provide the availability of Drs. Jungbauer and Macmichael for deposition in advance of the deadline for our responsive claim construction brief. Due to the briefing schedule, we ask that they both be provided for deposition next week.

Regards,

Tom

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From: Gordon Copland <Gordon.Copland@Steptoe-Johnson.com<mailto:Gordon.Copland@Steptoe-Johnson.com>>

Date: Tuesday, Nov 29, 2022 at 9:49 PM

To: 'sruby@cdkrlaw.com' <sruby@cdkrlaw.com<mailto:sruby@cdkrlaw.com>>, David Pogue <drpogue@cdkrlaw.com<mailto:drpogue@cdkrlaw.com>>, Berl, David <DBerl@wc.com<mailto:DBerl@wc.com>>, Oberwetter, Ellen <EOberwetter@wc.com<mailto:EOberwetter@wc.com>>, Fletcher, Thomas <TFletcher@wc.com<mailto:TFletcher@wc.com>>, Gregory, Teagan <TGregory@wc.com<mailto:TGregory@wc.com>>, Jordan, Nicholas <njordan@wc.com<mailto:njordan@wc.com>>, Kayali, Kathryn <KKayali@wc.com<mailto:KKayali@wc.com>>, Argall, Arthur <aargall@wc.com<mailto:aargall@wc.com>>, Mahaffy, Shaun <SMahaffy@wc.com<mailto:SMahaffy@wc.com>>, Pan, Adam <apan@wc.com<mailto:apan@wc.com>>, Trask, Andrew <atrask@wc.com<mailto:atrask@wc.com>>, Bernal Anderson, Haylee <HAnderson@wc.com<mailto:HAnderson@wc.com>>, Douglass, Sean <SDouglass@wc.com<mailto:SDouglass@wc.com>>, Griffin, Renee <rgriffin@wc.com<mailto:rgriffin@wc.com>>

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Subject: Regeneron v. Mylan, No. 22-cv-61 Motion to Seal Mylan Opening Claim Const. Brief and Attachments

Counsel:

Attached are the following related to Mylan's opening Claim Construction brief:

1. Motion for Leave to File under Seal;
2. Defendant Mylan Pharmaceuticals Inc. Opening Claim Construction Brief;
3. Declaration of Alois Jungbauer, Ph.D. in Support of Defendant's Claim Construction Brief; and
4. Declaration of Gregory Macmichael, Ph.D. in Support of Defendant's Claim Construction Brief.

All of the foregoing were filed under seal by me, with 64 supporting exhibits. I received an error message after what appeared to be the filing, and did not get the normal confirmation. I will confirm with the clerk's office tomorrow whether there was a technical glitch.

Due to size restrictions, Exhibits 1-64 are not attached to this email, but a link allowing download will be sent by separate email shortly.

Note that the memorandum of law in support of the motion for leave to file under seal will be filed publicly.

Best regards,

Gordon

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