

# EXHIBIT 5

**Griffin, Renee**

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**From:** Fogel, Louis E. <LFogel@jenner.com>  
**Sent:** Thursday, February 8, 2024 12:14 PM  
**To:** Kayali, Kathryn; bspann@tcspilc.com; dgriffith@tcspilc.com; Van Horn, Shaun M.; Mascherin, Terri L.  
**Cc:** Eylea; Eylea Biosimilars; DL\_FYB203Internal  
**Subject:** RE: MDL No. 3103: In re Aflibercept Patent Litigation

Counsel,

We reject your request to serve unredacted copies of excerpts of Formycon's Detailed Statement pursuant to 42 U.S.C. § 262(l)(3)(B) or information contained therein on outside counsel for other defendants. As you acknowledge, Formycon designated its § 262(l)(3)(B) contentions as confidential information pursuant to the parties' August 23, 2023 Section 262(l) Confidentiality Agreement and § 262(l)(1). Pursuant to the Confidentiality Agreement, only Regeneron's Authorized Evaluators may view Formycon's confidential information. And pursuant to § 262(l)(1)(D), such confidential information "shall be used for the sole and exclusive purpose of determining, with respect to each patent assigned to or exclusively licensed by the reference product sponsor, whether a claim of patent infringement could reasonably be asserted if the subsection (k) applicant engaged in the manufacture, use, offering for sale, sale, or importation into the United States of the biological product that is the subject of the application under subsection (k)." Regeneron's JPML reply clearly falls outside the scope of that sole and exclusive purpose for using Formycon's confidential information. And nothing about the statement in our JPML opposition suggests a waiver of Formycon's rights with respect to its confidential information.

As such, any disclosure or use of Formycon's confidential information in connection with Regeneron's JPML reply would constitute a violation of the parties' Confidentiality Agreement and § 262(l)(1), for which Formycon would be entitled to seek immediate injunctive relief. Formycon reserves all rights with respect to the confidentiality of its § 262(l)(3)(B) contentions.

Best regards,  
 Louis

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**From:** Kayali, Kathryn <KKayali@wc.com>  
**Sent:** Wednesday, February 7, 2024 4:15 AM  
**To:** bspann@tcspilc.com; dgriffith@tcspilc.com; Fogel, Louis E. <LFogel@jenner.com>; Van Horn, Shaun M. <SVanHorn@jenner.com>; Mascherin, Terri L. <TMascherin@jenner.com>  
**Cc:** Eylea <Eylea@wc.com>; Eylea Biosimilars <Eylea.Biosimilars@weil.com>  
**Subject:** MDL No. 3103: In re Aflibercept Patent Litigation

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Counsel,

In your MDL opposition brief, you stated that your defenses differ from the defenses raised by other Defendants (Amgen, Celltrion, Samsung Bioepis, Mylan and/or Biocon). We therefore assume you reviewed the defenses asserted by other Defendants or otherwise conferred regarding their content. Please confirm that you therefore agree to Regeneron's service of unredacted copies of excerpts of Formycon's contentions pursuant to 28 U.S.C.

will be included as part of Regeneron's JPML reply. Any such material will be filed under seal or redacted and not visible to the public. To the extent your position differs as to Formycon's infringement contentions and Formycon's invalidity contentions, please so specify. In the absence of agreement, we will need to serve outside counsel only with redacted copies of Regeneron's reply.

In the alternative, if your client does not consider its contentions to be confidential, please let us know so that we may dispense with the sealing process.

Best,

Kat

**Kathryn S. Kayali**

**Williams & Connolly LLP**

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**Louis E. Fogel**

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