

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

REGENERON PHARMACEUTICALS, INC., Plaintiff, v. CELLTRION, INC., Defendant.	Civil Action No. 1:23-cv-00089-TSK
REGENERON PHARMACEUTICALS, INC., Plaintiff, v. SAMSUNG BIOEPIS CO., LTD., Defendant.	Civil Action No. 1:23-cv-00094-TSK
REGENERON PHARMACEUTICALS, INC., Plaintiff, v. FORMYCON AG, Defendant.	Civil Action No. 1:23-cv-00097-TSK
REGENERON PHARMACEUTICALS, INC., Plaintiff, v. SAMSUNG BIOEPIS CO., LTD., Defendant.	Civil Action No. 1:23-cv-00106-TSK

**DEFENDANTS CELLTRION, INC., SAMSUNG BIOEPIS CO., LTD.,
AND FORMYCON AG'S EXPEDITED MOTION FOR STATUS CONFERENCE**

Defendants Celltrion, Inc. (“Celltrion”), Samsung Bioepis Co., Ltd. (“SB”), and Formycon AG (“Formycon”) (collectively, the “PI Defendants”)¹ jointly submit this Expedited Motion for Status Conference to address disputes that have arisen between the parties in interpreting the Court’s January 9, 2024 Order Setting Briefing Schedule on Motions to Dismiss and Setting Schedule for Preliminary Injunction Proceedings (ECF No. 61 in 1:23-CV-89, ECF No. 69 in Case No. 1:23-CV-94, ECF No. 45 in 1:23-CV-97, and ECF No. 40 in Case No. 1:23-CV-106) (“PI Scheduling Order”).² The PI Defendants respectfully submit that the requested status conference could be held remotely, via teleconference or Zoom, if that is the Court’s preference.

Briefly, the current disputes center on two issues: (1) whether Regeneron can file one omnibus preliminary injunction brief across its separate actions against SB, Celltrion, and Formycon; and (2) whether Regeneron may file declarations with its reply brief and, if so, whether the reply declarants must be made available for deposition. To address both issues, the PI Defendants prepared a proposed schedule and sent it to Regeneron last week. (*See* Ex. B.) That proposed schedule is attached to this Motion as Exhibit A. Regeneron thus far has not directly responded to this proposed schedule, but its subsequent emails have made clear it intends to continue to pursue its own interpretation of the existing schedule. (*See, e.g.*, Ex. C.) Given the upcoming deadlines, the PI Defendants respectfully request that the Court schedule a status

¹ The PI Defendants’ counsel have appeared specially for the limited purpose of contesting jurisdiction and have already has filed their respective motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(2). This brief, which is limited to procedural aspects of the case, is similarly being submitted to facilitate early and prompt resolution of the PI Defendants’ jurisdictional challenge.

² In the interest of efficiency, the PI Defendants have filed this identical motion in each of their respective actions.

conference as soon as the Court's schedule permits so that the parties can receive the Court's guidance regarding these procedural issues.³

I. REGENERON SHOULD FILE SEPARATE MOTIONS FOR PRELIMINARY INJUNCTION AGAINST ALL DEFENDANTS TO AVOID DISCLOSURE OF EACH PI DEFENDANT'S COMPETITIVELY-SENSITIVE INFORMATION

The Court's PI Scheduling Order provides that Regeneron is "to file motion(s) for preliminary injunction and supportive memoranda against all defendants." (emphasis added). The PI Defendants understand this deadline to require Regeneron to file separate preliminary injunction motions against each of SB, Celltrion, and Formycon. This understanding is based, in part, on the fact that Regeneron's emergency motion that led to the Court's PI Scheduling Order had sought a schedule under which Regeneron would "file motion for preliminary injunction and single supportive memorandum against all Defendants in case Nos. 1:23-cv-89-TSK, 1:23-cv-94-TSK, 1:23-cv-97-TSK, and 1:23-cv-106-TSK." (ECF No. 45-1 in 1:23-CV-89, ECF No. 40-1 in Case No. 1:23-CV-94, ECF No. 33-1 in 1:23-CV-97, and ECF No. 9-1 in Case No. 1:23-CV-106.) But the Court's PI Scheduling Order does not include Regeneron's proposed language, opting instead to refer to "motion(s)" and "memoranda."

Regeneron nevertheless has insisted during the parties' meet and confers that the Court's PI Scheduling Order does not require separate motions against the three defendants, but rather that the PI Scheduling Order gives Regeneron the option, in its sole discretion, to decide how many motions it wishes to file. (Ex. B at 5.) That position is not only inconsistent with the Court's PI

³ Earlier today, Regeneron filed an Emergency Motion for Clarification of the Court's January 9, 2024 Order, which deals primarily with that Order's upcoming deadlines related to the PI Defendants' motions to dismiss for lack of personal jurisdiction. (ECF No. 95 in 1:23-CV-89, ECF No. 96 in Case No. 1:23-CV-94, ECF No. 80 in 1:23-CV-97, and ECF No. 77 in Case No. 1:23-CV-106.) This Expedited Motion, in contrast, addresses the Court-ordered deadlines for the preliminary injunction briefing. The PI Defendants will separately respond to Regeneron's Emergency Motion shortly.

Scheduling Order, but it would also lead to an abuse of the protections surrounding the PI Defendants' confidential information.

To support its preliminary injunction motion against each PI Defendant, Regeneron will necessarily use highly confidential technical information related to each PI Defendant's individual products in an effort to establish infringement. To argue irreparable harm, Regeneron will necessarily rely on highly sensitive commercial information related to each PI Defendant's respective planned marketing, sales, and launch plans. The PI Defendants are direct competitors. Because Regeneron's preliminary injunction motions are likely to involve some of their most sensitive information, such as their planned launch dates and specific product compositions, the PI Defendants want to ensure that this highly confidential information is not shared with their direct competitors. Consistent with these concerns, the parties' earlier confidentiality agreements and the draft protective order the parties are negotiating preclude any party from using another party's confidential information outside of their respective actions. By filing an omnibus preliminary injunction brief across four cases, Regeneron would violate those protections and use each PI Defendants' confidential information across all of the actions. Additionally, to serve any such omnibus brief on the PI Defendants, Regeneron would have to either disclose each of the PI Defendants' most sensitive confidential information to the others or redact huge swaths of information such that each defendant's counsel cannot review the entirety of Regeneron's opening preliminary injunction brief. The better solution is to require Regeneron to file separate motions for preliminary injunction, specific to each defendant, which is consistent with the Court's PI Scheduling Order.

II. IF REGENERON FILES REPLY DECLARATIONS, THE PI DEFENDANTS MUST HAVE AN OPPORTUNITY TO DEPOSE ANY DECLARANTS AND FILE A SUR-REPLY

The Court's PI Scheduling Order does not permit Regeneron to file any declarations with its replies in support of its preliminary injunction motions. While the Order specifically provides for deadlines for the depositions of Regeneron's declarants in connection with the opening motions and the PI Defendants' declarants in connection with their oppositions, the PI Scheduling Order is silent as to depositions of reply declarants, with the natural implication being that there will be no reply declarations.

Even though reply declarations are not contemplated by the PI Scheduling Order, Regeneron has indicated its intent to submit them anyway.⁴ While disagreeing that Regeneron is entitled to any such declarations, in the interest of compromise, the PI Defendants have proposed a schedule that allows for reply declarations limited to the issue of validity, while providing the PI Defendants an opportunity to depose the reply declarants and submit a sur-reply in further opposition. To fit these additional events into the schedule, the PI Defendants have proposed to slightly move up some of the previous deadlines such that the proposed hearing date of May 2, 2024 would not change.

⁴ In correspondence between the parties and during the parties' meet and confers, Regeneron has argued that it must be permitted to file reply declarations because the PI Defendants have not provided invalidity contentions for the preliminary injunction patents. This is a problem of Regeneron's own making. As an initial matter, Regeneron did not propose a deadline for invalidity contentions when it submitted its proposal to the Court with its emergency motion for entry of a schedule for preliminary injunction proceedings. (ECF No. 45-1 in 1:23-CV-89, ECF No. 40-1 in Case No. 1:23-CV-94, ECF No. 33-1 in 1:23-CV-97, and ECF No. 9-1 in Case No. 1:23-CV-106.) Further, Regeneron has refused to identify the claims of the preliminary injunction patents it intends to assert in its preliminary injunction motion, and it has refused to provide infringement contentions for the asserted preliminary injunction claims. Without this information, the PI Defendants cannot provide their invalidity contentions.

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