

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

AMGEN INC., et al.,)	
)	
Plaintiffs,)	
)	2:17-cv-01235
v.)	
)	
MYLAN INC., et al.,)	
)	
Defendants.)	

ORDER

The parties filed a joint status report (ECF No. 279) in response to the Court’s Order at ECF No. 278 directing counsel to confer regarding the effect of the Court of Appeals for the Federal Circuit’s recent decision in *Amgen Inc. v. Coherus BioSciences, Inc.*, No. 2018-1993 (Fed. Cir. July 29, 2019). The Court has reviewed the joint status report, Mylan’s renewed Motion for Judgment on the Pleadings Pursuant to Rule 12(c) Regarding U.S. Patent No. 8,273,707 (ECF No. 191), all related briefing and exhibits to that Motion, and the balance of the relevant documents and exhibits of record in this case. Based on the consideration of these filings, this Court’s claim construction Opinion and Order at ECF Nos. 171 and 172, and the *Coherus* decision, the Court concludes that Amgen’s claims of infringement related to U.S. Patent No. 8,273,707 (the “’707 Patent”) cannot proceed. Accordingly, the Court accepts the parties’ stipulation, attached as Exhibit A to the parties’ joint status report, (ECF No. 279-1), on the following terms.

It is hereby ORDERED Mylan’s Renewed Motion for Judgment on the Pleadings at ECF No. 191 is GRANTED. The Court hereby enters a judgment of non-infringement in favor of Mylan and against Amgen as to all claims related to the ’707 Patent. These claims include

Counts I and II of Amgen's First Amended and Supplemental Complaint, (ECF No. 210 ¶¶ 112–132), which are hereby DISMISSED WITH PREJUDICE. The Court also hereby enters a judgment of non-infringement as to Count I of Mylan's counterclaims in Mylan's Answer, Defenses and Counterclaims to First Amended and Supplemental Complaint, seeking a declaratory judgment of non-infringement of the '707 Patent. (ECF No. 220 ¶¶ 79–82).

It is further ORDERED that Count II of Mylan's counterclaims in Mylan's Answer, Defenses and Counterclaims to First Amended and Supplemental Complaint, seeking a declaratory judgment of invalidity of the '707 Patent, (ECF No. 220 ¶¶ 83–86), is DISMISSED WITHOUT PREJUDICE. Mylan may reassert that Count in the event that this matter is remanded for any further consideration following any appeal.

Amgen maintains its right to seek any appeal of any final judgment regarding the '707 Patent in this litigation, including underlying decisions such as this Court's Claim Construction Opinion and Order, (ECF Nos. 171, 172), pursuant to 28 U.S.C. § 1291 and 28 U.S.C. § 1292(c)(2). Mylan maintains its right to seek fees or costs as to the '707 Patent in this litigation.

None of the foregoing provisions in this Order has any impact on the claims, defenses, or prayers for relief of either party related to the validity of, infringement of, or relief available as to U.S. Patent No. 9,643,997 (the "'997 Patent"). However, due to the continued pendency of Amgen's petition for rehearing *en banc* before the Court of Appeals for the Federal Circuit in *Amgen, Inc. v. Sandoz Inc.*, Nos. 2018-1551, 2018-1552 (Fed. Cir. May 8, 2019), the Court concludes that good cause exists to extend the abeyance imposed by the Order at ECF No. 264 and extended by the Order at ECF No. 273. It is therefore further ORDERED that this civil

action is hereby STAYED pending further Order of the Court. This STAY may be lifted or modified on motion by either party for good cause shown or *sua sponte* by the Court.

Subject to the vagaries of the Court's criminal docket and other unforeseeable circumstances, the Court does not anticipate that the entry of this STAY will delay any anticipated trial date in this case (should this case proceed to that stage) as discussed during the June 10, 2019, telephonic status conference with counsel.

It is further ORDERED that:

1. The parties shall promptly confer and file a joint status report if there are any significant developments regarding Amgen's pending petition for rehearing *en banc* in *Amgen Inc. v. Sandoz Inc.*, Nos. 18-1551, 18-1552 (Fed. Cir. May 8, 2019).

2. The parties shall file a joint status report on or before September 20, 2019, including as to all relevant proceedings before the Court of Appeals for the Federal Circuit.

3. This civil action will be administratively closed on the docket during the pendency of the STAY, without prejudice to any party.



Mark R. Hornak
Chief United States District Judge

Dated: August 21, 2019

cc: All counsel of record