

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMGEN INC., AMGEN MANUFACTURING,)
LIMITED; AND AMGEN USA, INC)

Plaintiffs,)

v.)

Civ. No. 14-1317-SLR
(Consolidated)

SANOFI; SANOFI-AVENTIS U.S. LLC;)
AVENTISUB LLC f/d/b/a AVENTIS)
PHARMACEUTICALS INC.; and)
REGENERON PHARMACEUTICALS,)
INC.,)

Defendants.)

MEMORANDUM ORDER

At Wilmington this 9th day of January, 2017, having reviewed the papers filed in connection with defendants' motion to stay entry of the permanent injunction;¹

IT IS ORDERED that the motion (D.I. 394) is denied, for the reasons that follow:

1. **Standard.** A court may stay an injunction pending appeal pursuant to Federal Rule of Civil Procedure 62(c). In exercising its discretion to issue such a stay, the Federal Circuit has indicated that a court must consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Standard Havens Prods. v. Gencor Indus.*, 897 F.2d 511, 512 (Fed. Cir. 1990) (citations omitted). The Federal Circuit also has opined that

¹Including an exchange of emergency emails with the court. (D.I. 400)

each factor need not be given equal weight, instead, a court should use a flexible balancing approach. *Id.* at 513. In deciding whether to grant a stay pending appeal, a court should “assess[] the movant’s chances of success on the merits and weigh[] the equities as they affect the parties and the public.” *Essex Electro Engineers, Inc. v. United States*, 433 F. App’x 901 (Fed. Cir. 2011) (citing *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 835 F.2d 277, 278 (Fed. Cir. 1987)).

2. As reflected in the court’s order on the permanent injunction, the court has essentially weighed the above factors and entered a limited stay. Although the court declines to grant the relief requested (a stay pending appeal), the court will extend the 30-day stay to 45 days, to provide ample opportunity for an appeal of the instant order.

3. **Conclusion.** For the aforementioned reasons, defendants’ motion to stay the permanent injunction (D.I. 394) pending appeal is denied. The permanent injunction is stayed for 45 days.



United States District Judge