

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

REGENERON PHARMACEUTICALS, INC.,

Plaintiff,

v.

SAMSUNG BIOEPIS CO., LTD.,

Defendant.

Civil Action No. 1:23-cv-94-TSK

**SAMSUNG BIOEPIS CO., LTD.'S OPPOSITION TO
REGENERON'S MOTION FOR ALTERNATIVE SERVICE**

Defendant Samsung Bioepis Co., Ltd. (“SB”) submits this opposition to Plaintiff Regeneron Pharmaceuticals, Inc.’s (“Regeneron”) Motion for Alternative Service.¹

The Court should deny Regeneron’s motion for alternative service on SB as moot. SB filed a motion pursuant to Fed. R. Civ. P. 12(b)(2) to dismiss this case for lack of personal jurisdiction prior to filing this opposition. SB does not raise a challenge to service in that paper. By filing its motion to dismiss without raising defects in service, SB has resolved the issue of service without waiting for Regeneron’s motion to be resolved.

In its motion for alternative service, Regeneron seeks to paint SB as dilatory, accusing SB of “erecting a series of wasteful and baseless procedural roadblocks” to preliminary injunction procedures. Dkt. 38-1 at 1. But Regeneron knew that SB intended to moot the issue of service before Regeneron filed its motion.

Specifically, on December 11, 2023—eleven days *before* Regeneron filed its motion for alternative service—SB responded to Regeneron’s request that SB accept service of the Complaint and explained that SB intended “to bring a motion under Fed. R. Civ. P. 12(b)(2) to dismiss Regeneron’s recently filed complaint for lack of personal jurisdiction” and that it would therefore not accept service of the complaint via email. Ex. 1. SB reiterated that position on December 18, 2023, explaining to Regeneron that SB “intend[ed] to file its Rule 12(b)(2) motion without waiting to be served, and we expect to do so after the holidays.” Ex. 2. SB further explained that “[a]t that point, service would no longer be an issue.” *Id.* SB reiterated its position a third time on December 21, 2023, this time in a joint email with Celltrion and Formycon. Ex. 3 (“[E]ach of the

¹ SB’s counsel has appeared specially for the limited purpose of contesting jurisdiction, and SB already has filed its motion 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 SB’s jurisdictional challenge.

defendants noted their intent to file a motion to dismiss in January, without waiting to be served.”). Having filed its January 4, 2024 motion to dismiss, SB has done exactly as it said it would.

Notably, despite attaching its correspondence with Celltrion and Formycon to its motion for alternative service, Regeneron neglected to attach or cite any of its correspondence with SB. Instead, Regeneron characterizes SB’s position as “refus[ing] to accept service.” Dkt. 38-1 at 2, 6-7. That is not accurate. Regeneron’s correspondence with SB, summarized above and attached as Exs. 1-3, shows that SB did not seek to delay by refusing service, but rather informed Regeneron that it would moot the issue of service entirely via a motion to dismiss.

Moreover, to the extent there has been any delay, it is Regeneron’s. Regeneron never made any attempt to properly serve SB under Fed. R. Civ. P. 4, other than making an improper request to serve SB via email.² Regeneron did not serve a simple waiver request and never began service under the Hague Convention (which it claims, without evidence, is too onerous (Dkt. 38-1 at 9)). Despite Regeneron’s failure to follow the Federal Rules, SB has now mooted the issue of service.

SB also repeatedly explained to Regeneron that SB’s refusal to accept service is directly connected to SB’s challenge to the Court’s personal jurisdiction. No court in the Fourth Circuit

² Contrary to Regeneron’s assertion in its motion, email service would be improper and is not allowed in South Korea, including under the Hague Convention. As Regeneron notes, alternative service is improper when prohibited by international agreement. Dkt. 38-1 at 12. Despite Regeneron’s suggestion to the contrary, South Korea has objected to all forms of alternative service allowed under the Hague Convention via Article X of the Convention. Ex. __. While those forms of service do not explicitly list email, numerous courts have concluded that signatory nations to the Hague who have objected to all alternate forms of service via Article X do not implicitly “consent to service by means not listed in Article X, including e-mail.” *See, e.g. Habas Sinai Ve Tibbi Gazlar Istihsal A.S. v. Int’l Tech. & Knowledge Co., Inc.*, No. CV 19-608, 2019 WL 7049504, at *4 (W.D. Pa. Dec. 23, 2019) (“Given its objection to service by postal channels or judicial officers, the Court cannot conclude that Turkey has consented to service by means not listed in Article 10, including e-mail.”); *Luxottica Group S.P.A. v. P’ships & Unincorporated Ass’ns Identified on Schedule “A”*, 391 F. Supp. 3d 816, 825 (N.D. Ill. 2019); *Elobied v. Baylock*, 299 F.R.D. 105, 108 (E.D. Pa. 2014).

has expressly held that accepting service via email does not waive a personal jurisdiction defense.³ SB thus had no cause to risk accepting service, particularly when it intended to file its motion to dismiss and moot the issue of service entirely. SB informed Regeneron of all of this before Regeneron filed its motion accusing SB of seeking delay.

To be clear, SB agrees that the parties should proceed to an orderly resolution of Regeneron's intended preliminary injunction motion—in an appropriate jurisdiction. But the roadblock to that resolution is not SB's refusal of service, as Regeneron suggests. The roadblock is the Court's lack of personal jurisdiction. The Court cannot issue a preliminary injunction without personal jurisdiction over SB. *Celgard, LLC v. LG Chem, Ltd.*, 624 F. App'x 748, 751–52 (Fed. Cir. 2015) (“LG argues that the district court legally erred by failing to consider whether it had personal jurisdiction over LG before granting the preliminary injunction. We agree.”). If Regeneron believes, as it says, that the procedural issues with this case are “depriving the parties and this Court of the ‘time for adjudicating’” the parties’ dispute (Dkt. 38-1 at 15), it can resolve that issue by refile elsewhere. But it cannot resolve it by manufacturing an atmosphere of emergency around issues such as service to obscure or overrun SB's meritorious challenge to personal jurisdiction.

The Court should deny Regeneron's motion for alternative service on SB as moot.

³ Regeneron suggests that SB's acceptance of service in a different case filed in Delaware somehow means SB should have accepted service here without risk (Dkt 38-1 at 2). But SB did not contest personal jurisdiction in that other case, while it has clearly and consistently indicated its intention to contest personal jurisdiction here.

Dated: January 4, 2024

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CERTIFICATE OF SERVICE

I hereby certify that, on January 4, 2024, I electronically filed the foregoing document with the Clerk of the Court by using the Court's CM/ECF, which will send notification of such filing to all registered participants. In addition, I certify that I caused copies of the foregoing document to be served on January 4, 2024, by email upon all of the following counsel, as well as by U.S. Mail on David R. Pogue at the address indicated below:

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