

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

REGENERON PHARMACEUTICALS, INC.,

Plaintiff,

v.

FORMYCON AG,

Defendant.

Civil Action No. 1:23-CV-97  
Judge Thomas S. Kleeh

**DEFENDANT FORMYCON AG’S RESPONSE TO  
PLAINTIFF’S MOTION FOR ALTERNATIVE SERVICE**

Defendant Formycon AG (“Formycon”), through its undersigned counsel, hereby appears specifically in this case for the sole purpose of responding to Plaintiff Regeneron Pharmaceuticals, Inc.’s (“Regeneron”) motion for alternative service (Dkt. 31). By making this special appearance, Formycon reserves and does not waive all objections as to service, personal jurisdiction, venue and all other issues under Federal Rule of Civil Procedure 12(b).

**BACKGROUND**

Formycon is a foreign biologics company based in Munich, Germany and incorporated in Germany. (Dkt. 1, ¶ 7.) Formycon has no place of business in the United States. (*See id.* ¶ 20.)

Formycon has filed a Biologics Drug Application for a proposed biosimilar of EYLEA®, called FYB203. (*Id.* ¶ 4.) Following months of engaging in the patent dance pursuant to 42 U.S.C. § 262(l), Regeneron filed this action on November 29, 2023, alleging that Formycon’s commercial marketing of FYB203 will infringe nearly 40 asserted patents. (*See id.* ¶¶ 4–5.) Regeneron has separately filed lawsuits against two other foreign companies over proposed biosimilars of EYLEA®: Celltrion Inc. and Samsung Bioepis Co., Ltd. *See Regeneron Pharmaceuticals, Inc. v.*

*Samsung Bioepis Co., Ltd.*, No. 1:23-CV-106 (N.D.W. Va.); *Regeneron Pharmaceuticals, Inc. v. Samsung Bioepis Co., Ltd.*, No. 1:23-CV-94 (N.D.W. Va.); *Regeneron Pharmaceuticals, Inc. v. Celltrion, Inc.*, No. 1:23-CV-89 (N.D.W. Va.). Like those companies, Formycon has not been served with process or even sent a request to waive service, despite numerous demands.

### ARGUMENT

Regeneron's motion should be denied. Since filing this action on November 29, 2023, Regeneron has not pursued proper service or waiver of service under Rules 4(d) or (f). *See* Fed. R. Civ. P. 4(d), (f). For its part, understanding that service under the Hague Convention is costly and time-consuming, Formycon has asked Regeneron several times to send a request for waiver of service that complies with the requirements of Rule 4(d). (*See, e.g.*, Ex. A.) Formycon has made clear that it will not use its rights under Rule 4(d)(1)(F) to delay. Formycon has told Regeneron that if Regeneron provides a compliant request for waiver of service, Formycon will provide a signed waiver, at the latest, when it files its motion to dismiss for, among other grounds, lack of personal jurisdiction, which Formycon intends to file by January 17, 2024. Formycon has also made clear to Regeneron that Formycon intends to move to dismiss for lack of personal jurisdiction "without waiting to be served" since at least December 21, 2023. (*See* Ex. B.) Thus, Regeneron's motion was unnecessary and will soon be moot, as Regeneron knew all along.

For its part, however, Regeneron has consistently refused to comply with Rule 4(d), including as recently as this week. (*See* Ex. C.) Instead, Regeneron has merely insisted that Formycon accept service via email, a method the Federal Rules do not contemplate. (*See* Dkt. 31-4.) Regeneron invokes Rule 4(f)(3) to support its request to serve Formycon via email, but that rule only allows service "by other means not prohibited by international agreement." Fed. R. Civ. P. 4(f)(3). While courts have disagreed about whether Germany's objection to service by "postal

channels” under Article 10 of the Hague Convention extends to service by email, the better view is that Germany does object because service by email is indistinguishable from service by conventional mail. *See, e.g., Agha v. Jacobs*, 2008 WL 2051061, at \*2 (N.D. Cal. May 13, 2008); *see also Prem Sales, LLC v. Guangdong Chigo Heating & Ventilation Equip. Co.*, 494 F. Supp. 3d 404, 414 (N.D. Tex. 2020) (collecting cases). Even assuming that international agreement permits the Court to authorize service on Formycon by email, the Court’s intervention is not warranted here given Regeneron’s failure to take *any* steps to properly effectuate service since filing the complaint, particularly given that Regeneron’s motion will soon be moot as to Formycon. *See, e.g., Cong v. Zhao*, 2022 WL 3447531, at \*2 (W.D. Wash. Aug. 17, 2022) (declining to allow service on foreign defendant by email where plaintiff made no reasonable efforts to serve by preferred means).

### CONCLUSION

For the foregoing reasons, Formycon respectfully requests that the Court deny Regeneron’s motion for alternative service.

Dated: January 4, 2024

OF COUNSEL:

Terri L. Mascherin (*pro hac vice* forthcoming)  
Louis E. Fogel (*pro hac vice* forthcoming)  
Shaun M. Van Horn (*pro hac vice* forthcoming)  
JENNER & BLOCK LLP  
353 North Clark Street  
Chicago, Illinois 60654  
(312) 222-9350

Respectfully submitted,

THOMAS COMBS & SPANN PLLC

/s/ M. David Griffith, Jr. \_\_\_\_\_  
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M. David Griffith, Jr. (WVSB No. 7720)  
300 Summers Street, Suite 1380  
Charleston, West Virginia 25301  
Phone: (304) 414-1800  
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*Attorneys for Defendant Formycon AG*

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on January 4, 2024, I caused a true and correct copy of the foregoing *Defendant Formycon AG's Response to Plaintiff's Motion for Alternative Service* to be filed via the Court's CM/ECF electronic filing system, thereby sending notice of the filing to all CM/ECF-registered counsel of record for Plaintiff.

/s/ M. David Griffith, Jr. \_\_\_\_\_  
M. David Griffith, Jr. (WVSB No. 7720)

# **EXHIBIT A**

**From:** [Van Horn, Shaun M.](#)  
**To:** [Fogel, Louis E.](#); [Berl, David](#); [Kayali, Kathryn](#); [DL\\_FYB203Internal](#); [Mascherin, Terri L.](#)  
**Cc:** [Eylea](#); [Eylea Biosimilars](#); [Goldsmith, Andrew E.](#); [jhartman@kelloggghansen.com](#); [David Pogue](#); [Steve Ruby](#)  
**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule  
**Date:** Friday, December 29, 2023 8:20:02 PM

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Dear David,

Further to our email below, Formycon hereby requests again that Regeneron send it a Rule 4 waiver of service request. Rule 4(d) provides the proper course for Regeneron to request waiver of service, and Regeneron has no excuse for not following that process. Formycon will not delay if you follow that proper process. Consistent with our statement below that Formycon intends to file a motion to dismiss in January, we anticipate accepting a waiver before or at that time. We have repeatedly made clear in our meetings that Formycon has no intention of using service of process as a delay or requiring Regeneron to undertake the Hague Convention process.

We further request that Regeneron withdraw its Motion for Alternative Service. That motion will be moot by the time it can be heard or ruled upon, given our commitment to waive service at the latest when we file our motion. And Regeneron's most recent motion, seeking to set a case schedule before service is effected is contrary to the Rules. We will be happy to discuss a schedule once service is effected under Rule 4(d).

Regards,  
Shaun

---

**From:** Fogel, Louis E. <LFogel@jenner.com>  
**Sent:** Thursday, December 21, 2023 10:00 AM  
**To:** Berl, David <DBerl@wc.com>; Robert Cerwinski <rcerwinski@geminilaw.com>; Laura Fairney <laurafairney@quinnemanuel.com>; Kayali, Kathryn <KKayali@wc.com>; Van Horn, Shaun M. <SVanHorn@jenner.com>; DL\_FYB203Internal <DL\_FYB203Internal@jenner.com>; Aviv Zalcenstein <azalcenstein@geminilaw.com>; DG-Aflibercept <DG-Aflibercept@NETORG8512690.onmicrosoft.com>; WFG-aflibercept@willkie.com; QE - Samsung Bioepis <qe-samsungbioepis@quinnemanuel.com>  
**Cc:** Eylea <Eylea@wc.com>; Eylea Biosimilars <Eylea.Biosimilars@weil.com>; Goldsmith, Andrew E. <agoldsmith@kelloggghansen.com>; jhartman@kelloggghansen.com; David Pogue <drpogue@cdkrlaw.com>; Steve Ruby <sruby@cdkrlaw.com>  
**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule

Dear David,

Thank you for the recent videocall with counsel for Samsung Bioepis, Celltrion, and Formycon. We are in receipt of Regeneron's amended schedule and stipulation. As we made clear on the call, however, none of the defendants believe that the N.D. W.Va. has jurisdiction over our clients. We intend to file motions to dismiss at least based on the court's lack of personal jurisdiction. We note that, on the call, we offered to explore several other jurisdictions, but Regeneron rejected such discussions out of hand.

We also noted that Regeneron has not made any attempt to effect service of process on any of our clients via any mechanism recognized under Rule 4. Your requests for us to accept email service do not suffice. Regeneron has offered no explanation for its failure to serve any of our clients, or for why it would not send requests for waiver of service, but as we noted, Regeneron's proposal to engage in discovery and motion practice is inappropriate until this basic issue is addressed.

As for next steps, each of the defendants noted their intent to file a motion to dismiss in January, without waiting to be served. We are happy to discuss an appropriate schedule for our motions. Moreover, while discovery is not appropriate until after the jurisdictional issues are resolved, if Regeneron wishes to identify the types of documents it will seek via its "limited discovery" once discovery opens, we are happy to take those requests under advisement while the jurisdictional issues are litigated.

In short, none of our clients have any contacts to West Virginia, and Regeneron's decision to file suit there raises significant jurisdictional issues. Defendants reiterate their willingness to discuss appropriate venues that will not raise these jurisdictional issues, and we again invite Regeneron to engage with us in that discussion.

Regards,  
Louis (on behalf of Formycon, Celltrion, and Samsung Bioepis)

---

**From:** Berl, David <[DBerl@wc.com](mailto:DBerl@wc.com)>  
**Sent:** Tuesday, December 19, 2023 7:39 PM  
**To:** Robert Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>; Laura Fairneny <[laurafairneny@quinnemanuel.com](mailto:laurafairneny@quinnemanuel.com)>; Fogel, Louis E. <[LFogel@jenner.com](mailto:LFogel@jenner.com)>; Kayali, Kathryn <[KKayali@wc.com](mailto:KKayali@wc.com)>; Van Horn, Shaun M. <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>; DL\_FYB203Internal <[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>; Aviv Zalcenstein <[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>; DG-Aflibercept <[DG-Aflibercept@NETORG8512690.onmicrosoft.com](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)>; [WFG-aflibercept@willkie.com](mailto:WFG-aflibercept@willkie.com); QE - Samsung Bioepis <[qe-samsungbioepis@quinnemanuel.com](mailto:qe-samsungbioepis@quinnemanuel.com)>  
**Cc:** Eylea <[Eylea@wc.com](mailto:Eylea@wc.com)>; Eylea Biosimilars <[Eylea.Biosimilars@weil.com](mailto:Eylea.Biosimilars@weil.com)>; Goldsmith, Andrew E. <[agoldsmith@kelloggghansen.com](mailto:agoldsmith@kelloggghansen.com)>; [jhartman@kelloggghansen.com](mailto:jhartman@kelloggghansen.com); David Pogue <[drpogue@cdkrlaw.com](mailto:drpogue@cdkrlaw.com)>; Steve Ruby <[sruby@cdkrlaw.com](mailto:sruby@cdkrlaw.com)>  
**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule

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All,

Per our call earlier this afternoon, please find attached a revised schedule. It is drafted for a single case but would be filed in each case where the parties agree to the schedule. Please provide a response quickly, as we have been negotiating these issues for weeks, and the remaining time to attempt to reach agreement is short. We are available tomorrow if you'd like to speak.

Regards,

David

**David I. Berl**

**Williams & Connolly LLP**

725 Twelfth Street, N.W., Washington, DC 20005

(P) 202-434-5491 | (F) 202-434-5029

[dberl@wc.com](mailto:dberl@wc.com) | [www.wc.com](http://www.wc.com)

---

**From:** Robert Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>

**Sent:** Monday, December 18, 2023 12:56 PM

**To:** Laura Fairney <[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>; Fogel, Louis E. <[LFogel@jenner.com](mailto:LFogel@jenner.com)>; Berl, David <[DBerl@wc.com](mailto:DBerl@wc.com)>; Kayali, Kathryn <[KKayali@wc.com](mailto:KKayali@wc.com)>; Van Horn, Shaun M.

<[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>; DL\_FYB203Internal <[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>; Aviv Zalcenstein <[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>; DG-Aflibercept <[DG-Aflibercept@NETORG8512690.onmicrosoft.com](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)>; WFG-aflibercept@willkie.com; QE - Samsung

Bioepis <[qe-samsungbioepis@quinnemanuel.com](mailto:qe-samsungbioepis@quinnemanuel.com)>

**Cc:** Eylea <[Eylea@wc.com](mailto:Eylea@wc.com)>; Eylea Biosimilars <[Eylea.Biosimilars@weil.com](mailto:Eylea.Biosimilars@weil.com)>; Goldsmith, Andrew E. <[agoldsmith@kelloggghansen.com](mailto:agoldsmith@kelloggghansen.com)>; [jhartman@kelloggghansen.com](mailto:jhartman@kelloggghansen.com); David Pogue <[drpogue@cdkrlaw.com](mailto:drpogue@cdkrlaw.com)>; Steve Ruby <[sruby@cdkrlaw.com](mailto:sruby@cdkrlaw.com)>

**Subject:** Re: Eylea-Regeneron: Proposed PI Schedule

That works for Celltrion as well.

Best,

Rob

---

**From:** Laura Fairney <[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>

**Date:** Monday, December 18, 2023 at 12:54 PM

**To:** "Fogel, Louis E." <[LFogel@jenner.com](mailto:LFogel@jenner.com)>, "Berl, David" <[DBerl@wc.com](mailto:DBerl@wc.com)>, "Kayali, Kathryn" <[KKayali@wc.com](mailto:KKayali@wc.com)>, "Van Horn, Shaun M." <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>, DL\_FYB203Internal <[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>, Aviv Zalcenstein <[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>, Robert

Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>, DG-Aflibercept <[DG-Aflibercept@NETORG8512690.onmicrosoft.com](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)>, "[WFG-aflibercept@willkie.com](mailto:WFG-aflibercept@willkie.com)" <[WFG-aflibercept@willkie.com](mailto:WFG-aflibercept@willkie.com)>, QE - Samsung Bioepis <[qe-samsungbioepis@quinnemanuel.com](mailto:qe-samsungbioepis@quinnemanuel.com)>

**Cc:** Eylea <[Eylea@wc.com](mailto:Eylea@wc.com)>, Eylea Biosimilars <[Eylea.Biosimilars@weil.com](mailto:Eylea.Biosimilars@weil.com)>, "Goldsmith, Andrew E." <[agoldsmith@kelloggghansen.com](mailto:agoldsmith@kelloggghansen.com)>, "[jhartman@kelloggghansen.com](mailto:jhartman@kelloggghansen.com)" <[jhartman@kelloggghansen.com](mailto:jhartman@kelloggghansen.com)>, David Pogue <[drpogue@cdkrlaw.com](mailto:drpogue@cdkrlaw.com)>, Steve Ruby <[sruby@cdkrlaw.com](mailto:sruby@cdkrlaw.com)>

**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule

David,

That time also works for Samsung Bioepis.



Regards,  
Laura

---

**From:** Fogel, Louis E. <[LFogel@jenner.com](mailto:LFogel@jenner.com)>  
**Sent:** Monday, December 18, 2023 12:31 PM  
**To:** Berl, David <[DBerl@wc.com](mailto:DBerl@wc.com)>; Laura Fairney <[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>; Kayali, Kathryn <[KKayali@wc.com](mailto:KKayali@wc.com)>; Van Horn, Shaun M. <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>; DL\_FYB203Internal <[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>; Aviv Zalcenstein <[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>; Robert Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>; DG-Aflibercept <[DG-Aflibercept@NETORG8512690.onmicrosoft.com](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)>; WFG-aflibercept@willkie.com; QE - Samsung Bioepis <[qe-samsungbioepis@quinnemanuel.com](mailto:qe-samsungbioepis@quinnemanuel.com)>  
**Cc:** Eylea <[Eylea@wc.com](mailto:Eylea@wc.com)>; Eylea Biosimilars <[Eylea.Biosimilars@weil.com](mailto:Eylea.Biosimilars@weil.com)>; Goldsmith, Andrew E. <[agoldsmith@kelloggghansen.com](mailto:agoldsmith@kelloggghansen.com)>; [jhartman@kelloggghansen.com](mailto:jhartman@kelloggghansen.com); David Pogue <[drpogue@cdkrlaw.com](mailto:drpogue@cdkrlaw.com)>; Steve Ruby <[sruby@cdkrlaw.com](mailto:sruby@cdkrlaw.com)>  
**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule

[EXTERNAL EMAIL from [lfogel@jenner.com](mailto:lfogel@jenner.com)]

---

David,

That time works for the Formycon team.

Regards,  
Louis

---

**From:** Berl, David <[DBerl@wc.com](mailto:DBerl@wc.com)>  
**Sent:** Monday, December 18, 2023 10:39 AM  
**To:** Laura Fairney <[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>; Kayali, Kathryn <[KKayali@wc.com](mailto:KKayali@wc.com)>; Van Horn, Shaun M. <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>; DL\_FYB203Internal <[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>; Aviv Zalcenstein <[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>; Robert Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>; DG-Aflibercept <[DG-Aflibercept@NETORG8512690.onmicrosoft.com](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)>; WFG-aflibercept@willkie.com; QE - Samsung Bioepis <[qe-samsungbioepis@quinnemanuel.com](mailto:qe-samsungbioepis@quinnemanuel.com)>  
**Cc:** Eylea <[Eylea@wc.com](mailto:Eylea@wc.com)>; Eylea Biosimilars <[Eylea.Biosimilars@weil.com](mailto:Eylea.Biosimilars@weil.com)>; Goldsmith, Andrew E. <[agoldsmith@kelloggghansen.com](mailto:agoldsmith@kelloggghansen.com)>; [jhartman@kelloggghansen.com](mailto:jhartman@kelloggghansen.com); David Pogue <[drpogue@cdkrlaw.com](mailto:drpogue@cdkrlaw.com)>; Steve Ruby <[sruby@cdkrlaw.com](mailto:sruby@cdkrlaw.com)>  
**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule

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Laura,

We are available to speak tomorrow at 230 pm, et. Please confirm this time.

Regards,

David Berl

**David I. Berl**

**Williams & Connolly LLP**

725 Twelfth Street, N.W., Washington, DC 20005

(P) 202-434-5491 | (F) 202-434-5029

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---

**From:** Laura Fairney <[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>

**Sent:** Monday, December 18, 2023 8:46 AM

**To:** Kayali, Kathryn <[KKayali@wc.com](mailto:KKayali@wc.com)>; Van Horn, Shaun M. <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>;

DL\_FYB203Internal <[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>; Aviv Zalcenstein

<[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>; Robert Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>; DG-Aflibercept

<[DG-Aflibercept@NETORG8512690.onmicrosoft.com](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)>; [WFG-aflibercept@willkie.com](mailto:WFG-aflibercept@willkie.com); QE - Samsung

Bioepis <[qe-samsungbioepis@quinnemanuel.com](mailto:qe-samsungbioepis@quinnemanuel.com)>

**Cc:** Eylea <[Eylea@wc.com](mailto:Eylea@wc.com)>; Eylea Biosimilars <[Eylea.Biosimilars@weil.com](mailto:Eylea.Biosimilars@weil.com)>; Goldsmith, Andrew E.

<[agoldsmith@kelloggghansen.com](mailto:agoldsmith@kelloggghansen.com)>; [jhartman@kelloggghansen.com](mailto:jhartman@kelloggghansen.com); David Pogue

<[drpogue@cdkrlaw.com](mailto:drpogue@cdkrlaw.com)>; Steve Ruby <[sruby@cdkrlaw.com](mailto:sruby@cdkrlaw.com)>

**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule

Kat,

The Samsung Bioepis team cannot talk at 8:30 a.m. ET. Among other conflicts, we have team members on the West Coast. We are available any time after noon ET on Tuesday.

Regards,

Laura

---

**From:** Kayali, Kathryn <[KKayali@wc.com](mailto:KKayali@wc.com)>

**Sent:** Friday, December 15, 2023 6:14 PM

**To:** Van Horn, Shaun M. <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>; DL\_FYB203Internal

<[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>; Aviv Zalcenstein <[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>; Robert

Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>; DG-Aflibercept <[DG-](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)

[Aflibercept@NETORG8512690.onmicrosoft.com](mailto:Aflibercept@NETORG8512690.onmicrosoft.com)>; [WFG-aflibercept@willkie.com](mailto:WFG-aflibercept@willkie.com); Laura Fairney

<[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>; QE - Samsung Bioepis <[\[samsungbioepis@quinnemanuel.com\]\(mailto:samsungbioepis@quinnemanuel.com\)>](mailto:qe-</a></p></div><div data-bbox=)

**Cc:** Eylea <[Eylea@wc.com](mailto:Eylea@wc.com)>; Eylea Biosimilars <[Eylea.Biosimilars@weil.com](mailto:Eylea.Biosimilars@weil.com)>; Goldsmith, Andrew E.

<[agoldsmith@kelloggghansen.com](mailto:agoldsmith@kelloggghansen.com)>; [jhartman@kelloggghansen.com](mailto:jhartman@kelloggghansen.com); David Pogue

<[drpogue@cdkrlaw.com](mailto:drpogue@cdkrlaw.com)>; Steve Ruby <[sruby@cdkrlaw.com](mailto:sruby@cdkrlaw.com)>

**Subject:** Eylea-Regeneron: Proposed PI Schedule

[EXTERNAL EMAIL from [kkayali@wc.com](mailto:kkayali@wc.com)]

Counsel:

We have been in communication regarding proposed preliminary injunction schedules, and look forward to a productive discussion on Tuesday. I will circulate an invitation for 8:30AM; please let us know if that time is acceptable. Please find attached a proposed schedule for discussion on the call.

Best,

Kat

**Kathryn S. Kayali**  
**Associate | Williams & Connolly LLP**  
680 Maine Avenue S.W., Washington, DC 20024  
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**Louis E. Fogel**

**Jenner & Block LLP**  
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# **EXHIBIT B**

**From:** [Fogel, Louis E.](#)  
**To:** [Berl, David](#); [Robert Cerwinski](#); [Laura Fairney](#); [Kayali, Kathryn](#); [Van Horn, Shaun M.](#); [DL\\_FYB203Internal](#); [Aviv Zalcenstein](#); [DG-Aflibercept](#); [WFG-aflibercept@willkie.com](#); [QE - Samsung Bioepis](#)  
**Cc:** [Eylea](#); [Eylea Biosimilars](#); [Goldsmith, Andrew E.](#); [jhartman@kelloggghansen.com](#); [David Pogue](#); [Steve Ruby](#)  
**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule  
**Date:** Thursday, December 21, 2023 10:00:10 AM

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Dear David,

Thank you for the recent videocall with counsel for Samsung Bioepis, Celltrion, and Formycon. We are in receipt of Regeneron's amended schedule and stipulation. As we made clear on the call, however, none of the defendants believe that the N.D. W.Va. has jurisdiction over our clients. We intend to file motions to dismiss at least based on the court's lack of personal jurisdiction. We note that, on the call, we offered to explore several other jurisdictions, but Regeneron rejected such discussions out of hand.

We also noted that Regeneron has not made any attempt to effect service of process on any of our clients via any mechanism recognized under Rule 4. Your requests for us to accept email service do not suffice. Regeneron has offered no explanation for its failure to serve any of our clients, or for why it would not send requests for waiver of service, but as we noted, Regeneron's proposal to engage in discovery and motion practice is inappropriate until this basic issue is addressed.

As for next steps, each of the defendants noted their intent to file a motion to dismiss in January, without waiting to be served. We are happy to discuss an appropriate schedule for our motions. Moreover, while discovery is not appropriate until after the jurisdictional issues are resolved, if Regeneron wishes to identify the types of documents it will seek via its "limited discovery" once discovery opens, we are happy to take those requests under advisement while the jurisdictional issues are litigated.

In short, none of our clients have any contacts to West Virginia, and Regeneron's decision to file suit there raises significant jurisdictional issues. Defendants reiterate their willingness to discuss appropriate venues that will not raise these jurisdictional issues, and we again invite Regeneron to engage with us in that discussion.

Regards,  
Louis (on behalf of Formycon, Celltrion, and Samsung Bioepis)

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**From:** Berl, David <DBerl@wc.com>  
**Sent:** Tuesday, December 19, 2023 7:39 PM  
**To:** Robert Cerwinski <rcerwinski@geminilaw.com>; Laura Fairney <laurafairney@quinnemanuel.com>; Fogel, Louis E. <LFogel@jenner.com>; Kayali, Kathryn <KKayali@wc.com>; Van Horn, Shaun M. <SVanHorn@jenner.com>; DL\_FYB203Internal <DL\_FYB203Internal@jenner.com>; Aviv Zalcenstein <azalcenstein@geminilaw.com>; DG-Aflibercept <DG-Aflibercept@NETORG8512690.onmicrosoft.com>; WFG-aflibercept@willkie.com; QE - Samsung Bioepis <qe-samsungbioepis@quinnemanuel.com>

**Cc:** Eylea <Eylea@wc.com>; Eylea Biosimilars <Eylea.Biosimilars@weil.com>; Goldsmith, Andrew E. <agoldsmith@kellogghansen.com>; jhartman@kellogghansen.com; David Pogue <drpogue@cdkrlaw.com>; Steve Ruby <sruby@cdkrlaw.com>  
**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule

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All,

Per our call earlier this afternoon, please find attached a revised schedule. It is drafted for a single case but would be filed in each case where the parties agree to the schedule. Please provide a response quickly, as we have been negotiating these issues for weeks, and the remaining time to attempt to reach agreement is short. We are available tomorrow if you'd like to speak.

Regards,

David

**David I. Berl**

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**From:** Robert Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>

**Sent:** Monday, December 18, 2023 12:56 PM

**To:** Laura Fairney <[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>; Fogel, Louis E. <[LFogel@jenner.com](mailto:LFogel@jenner.com)>; Berl, David <[DBerl@wc.com](mailto:DBerl@wc.com)>; Kayali, Kathryn <[KKayali@wc.com](mailto:KKayali@wc.com)>; Van Horn, Shaun M. <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>; DL\_FYB203Internal <[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>; Aviv Zalcenstein <[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>; DG-Aflibercept <[DG-Aflibercept@NETORG8512690.onmicrosoft.com](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)>; WFG-aflibercept@willkie.com; QE - Samsung Bioepis <[qe-samsungbioepis@quinnemanuel.com](mailto:qe-samsungbioepis@quinnemanuel.com)>

**Cc:** Eylea <Eylea@wc.com>; Eylea Biosimilars <Eylea.Biosimilars@weil.com>; Goldsmith, Andrew E. <agoldsmith@kellogghansen.com>; jhartman@kellogghansen.com; David Pogue <drpogue@cdkrlaw.com>; Steve Ruby <sruby@cdkrlaw.com>

**Subject:** Re: Eylea-Regeneron: Proposed PI Schedule

That works for Celltrion as well.

Best,

Rob

---

**From:** Laura Fairney <[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>

**Date:** Monday, December 18, 2023 at 12:54 PM

**To:** "Fogel, Louis E." <[LFogel@jenner.com](mailto:LFogel@jenner.com)>, "Berl, David" <[DBerl@wc.com](mailto:DBerl@wc.com)>, "Kayali, Kathryn"

<[KKayali@wc.com](mailto:KKayali@wc.com)>, "Van Horn, Shaun M." <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>, DL\_FYB203Internal <[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>, Aviv Zalcenstein <[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>, Robert Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>, DG-Aflibercept <[DG-Aflibercept@NETORG8512690.onmicrosoft.com](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)>, "[WFG-aflibercept@willkie.com](mailto:WFG-aflibercept@willkie.com)" <[WFG-aflibercept@willkie.com](mailto:WFG-aflibercept@willkie.com)>, QE - Samsung Bioepis <[qe-samsungbioepis@quinnemanuel.com](mailto:qe-samsungbioepis@quinnemanuel.com)>  
**Cc:** Eylea <[Eylea@wc.com](mailto:Eylea@wc.com)>, Eylea Biosimilars <[Eylea.Biosimilars@weil.com](mailto:Eylea.Biosimilars@weil.com)>, "Goldsmith, Andrew E." <[agoldsmith@kelloggghansen.com](mailto:agoldsmith@kelloggghansen.com)>, "[jhartman@kelloggghansen.com](mailto:jhartman@kelloggghansen.com)" <[jhartman@kelloggghansen.com](mailto:jhartman@kelloggghansen.com)>, David Pogue <[drpogue@cdkrlaw.com](mailto:drpogue@cdkrlaw.com)>, Steve Ruby <[sruby@cdkrlaw.com](mailto:sruby@cdkrlaw.com)>

**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule

David,

That time also works for Samsung Bioepis.

Regards,  
Laura

---

**From:** Fogel, Louis E. <[LFogel@jenner.com](mailto:LFogel@jenner.com)>

**Sent:** Monday, December 18, 2023 12:31 PM

**To:** Berl, David <[DBerl@wc.com](mailto:DBerl@wc.com)>; Laura Fairney <[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>; Kayali, Kathryn <[KKayali@wc.com](mailto:KKayali@wc.com)>; Van Horn, Shaun M. <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>; DL\_FYB203Internal <[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>; Aviv Zalcenstein <[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>; Robert Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>; DG-Aflibercept <[DG-Aflibercept@NETORG8512690.onmicrosoft.com](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)>; [WFG-aflibercept@willkie.com](mailto:WFG-aflibercept@willkie.com); QE - Samsung Bioepis <[qe-samsungbioepis@quinnemanuel.com](mailto:qe-samsungbioepis@quinnemanuel.com)>

**Cc:** Eylea <[Eylea@wc.com](mailto:Eylea@wc.com)>; Eylea Biosimilars <[Eylea.Biosimilars@weil.com](mailto:Eylea.Biosimilars@weil.com)>; Goldsmith, Andrew E. <[agoldsmith@kelloggghansen.com](mailto:agoldsmith@kelloggghansen.com)>; [jhartman@kelloggghansen.com](mailto:jhartman@kelloggghansen.com); David Pogue <[drpogue@cdkrlaw.com](mailto:drpogue@cdkrlaw.com)>; Steve Ruby <[sruby@cdkrlaw.com](mailto:sruby@cdkrlaw.com)>

**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule

[EXTERNAL EMAIL from [lfogel@jenner.com](mailto:lfogel@jenner.com)]

---

David,

That time works for the Formycon team.

Regards,  
Louis

---

**From:** Berl, David <[DBerl@wc.com](mailto:DBerl@wc.com)>

**Sent:** Monday, December 18, 2023 10:39 AM

**To:** Laura Fairney <[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>; Kayali, Kathryn <[KKayali@wc.com](mailto:KKayali@wc.com)>; Van

Horn, Shaun M. <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>; DL\_FYB203Internal <[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>; Aviv Zalcenstein <[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>; Robert Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>; DG-Aflibercept <[DG-Aflibercept@NETORG8512690.onmicrosoft.com](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)>; [WFG-aflibercept@willkie.com](mailto:WFG-aflibercept@willkie.com); QE - Samsung Bioepis <[qe-samsungbioepis@quinnemanuel.com](mailto:qe-samsungbioepis@quinnemanuel.com)>  
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**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule

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Laura,

We are available to speak tomorrow at 230 pm, et. Please confirm this time.

Regards,

David Berl

**David I. Berl**

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**From:** Laura Fairney <[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>

**Sent:** Monday, December 18, 2023 8:46 AM

**To:** Kayali, Kathryn <[KKayali@wc.com](mailto:KKayali@wc.com)>; Van Horn, Shaun M. <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>;

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**Subject:** RE: Eylea-Regeneron: Proposed PI Schedule

Kat,

The Samsung Bioepis team cannot talk at 8:30 a.m. ET. Among other conflicts, we have team members on the West Coast. We are available any time after noon ET on Tuesday.

Regards,

Laura

---



**From:** Kayali, Kathryn <[KKayali@wc.com](mailto:KKayali@wc.com)>  
**Sent:** Friday, December 15, 2023 6:14 PM  
**To:** Van Horn, Shaun M. <[SVanHorn@jenner.com](mailto:SVanHorn@jenner.com)>; DL\_FYB203Internal <[DL\\_FYB203Internal@jenner.com](mailto:DL_FYB203Internal@jenner.com)>; Aviv Zalcenstein <[azalcenstein@geminilaw.com](mailto:azalcenstein@geminilaw.com)>; Robert Cerwinski <[rcerwinski@geminilaw.com](mailto:rcerwinski@geminilaw.com)>; DG-Aflibercept <[DG-Aflibercept@NETORG8512690.onmicrosoft.com](mailto:DG-Aflibercept@NETORG8512690.onmicrosoft.com)>; WFG-aflibercept@willkie.com; Laura Fairney <[laurafairney@quinnemanuel.com](mailto:laurafairney@quinnemanuel.com)>; QE - Samsung Bioepis <[qe-samsungbioepis@quinnemanuel.com](mailto:qe-samsungbioepis@quinnemanuel.com)>  
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**Subject:** Eylea-Regeneron: Proposed PI Schedule

[EXTERNAL EMAIL from [kkayali@wc.com](mailto:kkayali@wc.com)]

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Counsel:

We have been in communication regarding proposed preliminary injunction schedules, and look forward to a productive discussion on Tuesday. I will circulate an invitation for 8:30AM; please let us know if that time is acceptable. Please find attached a proposed schedule for discussion on the call.

Best,

Kat

**Kathryn S. Kayali**  
Associate | Williams & Connolly LLP  
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**Louis E. Fogel**

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