

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

REGENERON PHARMACEUTICALS, INC.,

Plaintiff,

v.

MYLAN PHARMACEUTICALS INC., and
BIOCON BIOLOGICS INC.,

Defendants.

Case No. 1:22-cv-00061-TSK

**REGENERON PHARMACEUTICALS, INC.'S RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT REGARDING
U.S. PATENT NOS. 10,406,226; 10,464,992; and 10,857,205**

Plaintiff Regeneron Pharmaceuticals, Inc. (“Regeneron”) hereby submits the following statement in response to the motion (ECF 678) filed by Defendants Mylan Pharmaceuticals Inc. and Biocon Biologics Inc. (collectively, “Defendants”) seeking summary judgment in favor of Defendants on Regeneron’s seventh, ninth and eleventh causes of action (ECF 1) regarding U.S. Patent Nos. 10,406,226 (“the ’226 patent”); 10,464,992 (“the ’992 patent”); and 10,857,205 (“the ’205 patent”).

The ’226, ’992, and ’205 patents existed as of the date Regeneron filed its Complaint (ECF 1). Since that time, and in the interest of efficiency, Regeneron filed statutory disclaimers effective as to all claims of the ’226, ’992, and ’205 patents. *See* 37 C.F.R. § 1.321(a) (“A patentee owning the whole or any sectional interest in a patent may disclaim any complete claim or claims in a patent.”); ECF 679-2 (“Disclaimer in Patent Under 37 C.F.R. § 1.321(a)” for ’226 patent); ECF 679-3 (’992 patent); ECF 679-4 (’205 patent).

In view of the disclaimers, no Article III case or controversy remains with respect to these patents. *Sanofi-Aventis US v. Dr. Reddy’s Labs.*, 933 F. 3d 1367, 1373 (Fed. Cir. 2019). Regeneron respectfully submits that in the absence of a case or controversy, the proper disposition of Regeneron’s Seventh Cause of Action (infringement of the ’226 patent), Regeneron’s Ninth Cause of Action (infringement of the ’992 patent), and Regeneron’s Eleventh Cause of Action (infringement of the ’205 patent) is dismissal for lack of subject matter jurisdiction, rather than summary judgment. Regeneron does not oppose such dismissal and a proposed order to that effect accompanies this filing. Had Defendants conferred with Regeneron before filing their motion, Regeneron would have informed Defendants of its willingness to stipulate to dismissal instead of burdening the Court with motion practice.

Date: February 16, 2024

CAREY DOUGLAS KESSLER & RUBY, PLLC

Of Counsel:

/s/ Steven R. Ruby

David I. Berl (admitted *PHV*)
Ellen E. Oberwetter (admitted *PHV*)
Thomas S. Fletcher (admitted *PHV*)
Andrew V. Trask (admitted *PHV*)
Teagan J. Gregory (admitted *PHV*)
Shaun P. Mahaffy (admitted *PHV*)
Kathryn S. Kayali (admitted *PHV*)
Arthur J. Argall III (admitted *PHV*)
Adam Pan (admitted *PHV*)
Rebecca A. Carter (admitted *PHV*)
Haylee Bernal Anderson (admitted *PHV*)
Renee M. Griffin (admitted *PHV*)
Jennalee Beazley* (admitted *PHV*)
WILLIAMS & CONNOLLY LLP
680 Maine Avenue, SW
Washington, DC 20024
(202) 434-5000
dberl@wc.com
eoberwetter@wc.com
tfletcher@wc.com
atrask@wc.com
tgregory@wc.com
smahaffy@wc.com
sdouglass@wc.com
kkayali@wc.com
aargall@wc.com
apan@wc.com
handerson@wc.com
rgriffin@wc.com
rebeccacarter@wc.com
jbeazley@wc.com

Steven R. Ruby (WVSB No. 10752)
David R. Pogue (WVSB No. 10806)
Raymond S. Franks II (WVSB No. 6523)
707 Virginia Street East
901 Chase Tower (25301)
P.O. Box 913
Charleston, West Virginia 25323
(304) 345-1234
sruby@cdkrlaw.com
drpogue@cdkrlaw.com

*Attorneys for Plaintiff Regeneron
Pharmaceuticals, Inc.*

*Admitted only in Pennsylvania; practice supervised by D.C. Bar members

Elizabeth Stotland Weiswasser (admitted *PHV*)
Anish R. Desai (admitted *PHV*)
WEIL, GOTSHAL & MANGES

767 Fifth Avenue
New York, NY 10153
Elizabeth.Weiswasser@weil.com
Anish.Desai@weil.com

Christopher M. Pepe (admitted *PHV*)
WEIL, GOTSHAL & MANGES
2001 M Street, NW
Suite 600
Washington, DC 20036
Christopher.Pepe@weil.com

Andrew E. Goldsmith (admitted *PHV*)
Evan T. Leo (admitted *PHV*)
Jacob E. Hartman (admitted *PHV*)
Mary Charlotte Y. Carroll (admitted *PHV*)
Sven E. Henningson (admitted *PHV*)
KELLOGG, HANSEN, TODD, FIGEL &
FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
TEL: (202) 326-7900
agoldsmith@kellogghansen.com
eleo@kellogghansen.com
jhartman@kellogghansen.com
mcarroll@kellogghansen.com
shenningson@kellogghansen.com

*Attorneys for Plaintiff Regeneron
Pharmaceuticals, Inc.*

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 16th day of February 2024, the foregoing was filed using the Court's CM/ECF system, which will provide service to all counsel of record.

/s/ Steven R. Ruby
Steven R. Ruby (WVSB No. 10752)