

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

REGENERON PHARMACEUTICALS, INC.,

Plaintiff,

v.

MYLAN PHARMACEUTICALS INC.
and BIOCON BIOLOGICS INC.,

Defendants.

Civil Action No. 1:22-cv-00061-TSK

DEFENDANTS' PROTECTIVE NOTICE OF APPEAL

Notice is hereby given that Defendants Mylan Pharmaceuticals Inc. and Biocon Biologics Inc. (collectively, "Defendants") hereby appeal to the United States Court of Appeals for the Federal Circuit from the "Judgment" entered in this action, *Regeneron Pharmaceuticals, Inc. v. Mylan Pharmaceuticals Inc. and Biocon Biologics Inc.*, Case No. 22-cv-00061-TSK, by the United States District Court for the Northern District of West Virginia on December 27, 2023 (Dkt. No. 665) (the "December 27, 2023 Judgment").

Defendants believe that the December 27, 2023 Judgment is not a final, appealable judgment. It resolves fewer than all claims in the Complaint (Dkt. No. 1), and a Partial Final Judgment pursuant to Federal Rule of Civil Procedure 54(b) is therefore necessary before an appeal can be taken. Fed. R. Civ. P. 54(b) ("Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.").

Defendants are in communication with Plaintiff Regeneron Pharmaceuticals, Inc. (“Regeneron”) regarding the proper form of a Rule 54(b) judgment in this case.

Accordingly, in an abundance of caution, Defendants file this notice of appeal within 30 days of the December 27, 2023 Judgment as a protective measure to ensure appellate jurisdiction over the District Court’s judgment in this action. *See* 28 U.S.C. § 2107(a) (“Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree”). When the District Court enters an appealable judgment under Rule 54(b), Defendants will file a subsequent notice of appeal. This notice of appeal does not deprive the District Court of jurisdiction over this action.

Date: January 26, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2024, , I electronically filed the foregoing with the Clerk of the Court using the Court's CM/ECF system, which will send notice of the same to all counsel of record.

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