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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAAMGEN INC., et al.,  
Plaintiffs,  
v.  
SANDOZ INC., et al.,  
Defendants.Case No. [16-cv-02581-RS](#)**ORDER DENYING MOTION TO  
SEPARATE EQUITABLE RELIEF****I. INTRODUCTION**

Defendants Sandoz Inc., Sandoz International GmbH, Sandoz GmbH, and Lek Pharmaceuticals d.d. (collectively, “Sandoz”) move to separate Plaintiff Amgen’s claims for injunctive relief until after the merits of Amgen’s patent infringement suit have been resolved by jury trial. Pursuant to Civil Local Rule 7-1(b), the motion is suitable for disposition without oral argument and the hearing set for September 14, 2017 is vacated. Because Sandoz has not met its burden of proving that bifurcation is warranted, its motion is denied.

**II. BACKGROUND**

The patent disputes at issue between Amgen and Sandoz began in 2014. They involve two different products and two different cases brought under the Biologics Price Competition and Innovation Act (“BPCIA”). The first case involves Sandoz’s efforts to make and market a biosimilar version of Amgen’s pharmaceutical product filgrastim. This second case involves similar efforts related to an Amgen pharmaceutical called pegfilgrastim. While Sandoz’s

1 biosimilar filgrastim product has been approved by the FDA, its pegfilgrastim biosimilar will not  
2 be approved until 2019 at the earliest. Both cases are on the same discovery and trial schedules.  
3 Fact discovery closed on June 23, 2017. Expert discovery closes on October 6, 2017. Trial is set  
4 for March 26, 2018.

5 The motion at issue stems from a discovery dispute. In April of 2017, Amgen sought  
6 discovery of Sandoz's financial projections for its pegfilgrastim biosimilar including information  
7 related to FDA approval, marketing, and sales. Sandoz refused to produce documents or a witness  
8 on such topics. The parties subsequently submitted letter briefs outlining their positions and, on  
9 July 17, 2017, the magistrate judge overseeing discovery ruled that Sandoz was required to  
10 produce the material. The magistrate judge noted that the requested information regarding  
11 Sandoz's pegfilgrastim biosimilar was relevant to Amgen's claims for injunctive relief and those  
12 claims were set to be tried before a jury in March 2018. Unless and until Sandoz obtained a ruling  
13 limiting the issues being heard at trial, Amgen was entitled to the discovery requested. In response  
14 to this ruling, Sandoz filed the instant motion to separate Amgen's claims for equitable relief.

### 15 **III. LEGAL STANDARD**

16 Federal Rule of Civil Procedure 42(b) permits district courts to order a separate trial "of  
17 one or more separate issues, claims, crossclaims, counterclaims, or third-party claims" for  
18 purposes of "convenience, to avoid prejudice, or to expedite and economize." Fed. R. Civ. P.  
19 42(b). Generally, a district court "has broad discretion to bifurcate a trial to permit deferral of  
20 costly and possibly unnecessary proceedings[.]" *Jinro Am. Inc. v. Secure Invs., Inc.*, 266 F.3d 993,  
21 998 (9th Cir. 2001). Courts consider several factors in determining whether bifurcation is  
22 appropriate including separability of the issues, simplification of discovery, conservation of  
23 resources, and prejudice to the parties. See *Hirst v. Gertzen*, 676 F.2d 1252, 1261 (9th Cir. 1982);  
24 *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 459 (N.D. Cal. 1994). The party  
25 requesting bifurcation bears the burden of proving it is warranted in a particular case. *Spectra-*  
26 *Physics Lasers, Inc. v. Uniphase Corp.*, 144 F.R.D. 99, 102 (N.D. Cal. 1992).

1 **IV. DISCUSSION**

2 Sandoz apparently believes that “bifurcation” is too dramatic a word to describe its request  
3 and thus has styled its motion as seeking to “separate equitable relief.” Nonetheless, bifurcation is  
4 in fact what Sandoz seeks.

5 In support of its motion, Sandoz first argues that bifurcation would promote efficiency and  
6 judicial economy because issues regarding the validity of Amgen’s patent and Sandoz’s alleged  
7 infringement must be decided before Amgen can seek injunctive relief anyway. If Sandoz prevails  
8 on these earlier issues, bifurcation would prevent the unnecessary waste of time or resources  
9 involved in addressing injunctive relief. Second, Sandoz argues that Amgen would not suffer  
10 prejudice as a result of bifurcation because: a) Amgen has no right to a jury trial for the issue of  
11 injunctive relief; b) there is minimal overlap between the issues of injunctive relief and the other  
12 issues to be tried; and c) if the jury finds that Sandoz has infringed on Amgen’s patent, Sandoz  
13 would then provide immediate discovery of its pegfilgrastim biosimilar financials as needed to  
14 litigate the issue of injunctive relief. Lastly, Sandoz argues it would suffer prejudice if the  
15 proceedings were not bifurcated because: a) revealing the information sought by Amgen would  
16 put it at a competitive disadvantage; and b) providing the information would require depositions  
17 and written discovery that would burden the parties as they prepare for trial.

18 Amgen, in response, argues that bifurcation would not promote judicial economy and  
19 would in fact cause Amgen to suffer prejudice. With regard to economy, Amgen asserts that: a)  
20 Sandoz’s motion comes too late (after the close of fact discovery) to conserve resources through a  
21 stay on discovery; b) it would be more efficient for the parties to complete discovery now in  
22 accordance with their stipulated case schedule than to wait until after trial to conduct further  
23 discovery of information Sandoz currently possesses; and c) the documentary and witness  
24 evidence presented at trial will overlap with evidence relating to Amgen’s claim for equitable  
25 relief and would be more efficiently addressed all at once. With regard to prejudice, Amgen  
26 argues: a) it should not be denied access to information that may be relevant to the resolution of  
27 issues raised at the jury trial; b) Amgen has already produced analogous financial information to

1 that which Sandoz now seeks to withhold; and c) Amgen has until now prepared for trial and  
2 conducted discovery based on an understanding that equitable issues would not be bifurcated.  
3 Finally, Amgen asserts that the prejudice Sandoz alleges it will suffer is contingent on Amgen  
4 improperly using the information it receives from Sandoz and thus violating the Protective Order  
5 already in effect in this case.

6 Sandoz has not met its burden of proving that bifurcation is warranted. First, it is not clear  
7 that bifurcation would conserve judicial resources. While Sandoz is correct that the issue of  
8 injunctive relief will be decided by the Court not by the jury, it is far from clear that evidence  
9 related to injunctive relief (including the material Amgen seeks to discover) will prove irrelevant  
10 to other issues in the case. It seems quite possible that Sandoz's proposed bifurcated approach  
11 would end up requiring a post-trial hearing to resolve the issue of injunctive relief that involves  
12 live witnesses who will have already testified at trial.

13 Second, the prejudice that Sandoz claims it will suffer is overstated. The burden on Sandoz  
14 of providing Amgen with its pegfilgrastim biosimilar financials via deposition and documentary  
15 discovery, as ordered by the magistrate judge in July, seems less significant than the burden that  
16 might be imposed on the Court and on both parties should supplemental discovery be required  
17 after trial. Furthermore, Sandoz's claim that the financial information it produces to Amgen might  
18 put it at a competitive disadvantage is predicated on the belief that Amgen might improperly use  
19 that information in violation of the Protective Order, a premise which Sandoz offers no basis to  
20 presume.

21 These cases started years ago and fact discovery has already closed. The bifurcated  
22 approach that Sandoz proposes risks further prolonging the dispute between the parties well  
23 beyond the March trial for which both have been preparing for some time. Taking such a course  
24 might delay resolution of the dispute and could end up imposing greater burdens on the Court and  
25 the parties over the long term. The better and more efficient approach is to deal with any  
26 depositions and discovery that might be relevant now so that the trial in March can conclusively  
27 address all aspects of the dispute.

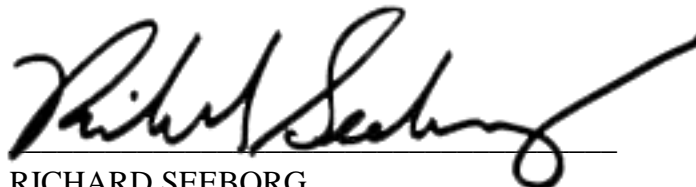
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**V. CONCLUSION**

Sandoz's motion to separate equitable relief is denied.

**IT IS SO ORDERED.**

Dated:



RICHARD SEEBORG  
United States District Judge