

Farnan, District Judge.

The Court, in a Memorandum Order dated December 11, 2003 (the "December 11 Memorandum Order") (D.I. 61), directed the parties to submit to the Court letters indicating their intentions regarding Count III of the Complaint. In response to the December 11 Memorandum Order, the parties submitted letters to the Court on their positions concerning whether this case should remain closed. In response to the Court's December 11 Memorandum Order and the parties' letters, the Third Circuit stayed GB Biosciences Corporation's, GB Biosciences Holdings Inc.'s, and Zeneca AG Products Holdings Inc.'s (collectively "GB") appeal and remanded the action to the Court to consider the issue of whether Count III remains open for adjudication.

I. Parties' Letter Responses

By its letter, GB indicates its intention to move forward on Count III of the Complaint. GB contends that Count III involves different facts and legal theories than those presented in its prior motion for summary judgment, and therefore, necessitates resolution by the Court.

Ishihara Sangyo Kaisha, Ltd. ("ISK") responds that the Court should deny GB's attempts to have the Court resolve Count III because the Court's Opinion and Order dated July 3, 2003 (the "July 3 Opinion and Order") (D.I. 33, 34), granting GB summary judgment was final on all claims. ISK also maintains that the

Court is without jurisdiction to adjudicate Count III because GB filed appeals of the Court's closure of this case, divesting the Court of jurisdiction to take any further action. ISK also asserts that reopening this case to adjudicate Count III would be unfair because GB already moved for summary judgment, and won, on a subject (the Stock Purchase Agreement) that underlies all of the Counts of the Complaint.

II. Decision

Count III of GB's Complaint has not been adjudicated, and GB has requested Count III be resolved. ISK opposes the request. The Third Circuit has remanded the matter to the Court, making clear the Court has jurisdiction to adjudicate Count III. In these circumstances, the Court will schedule Count III.

An appropriate Order will be entered.

