

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

_____	)	
GENENTECH, INC. and CITY OF HOPE	)	
	)	
Plaintiffs,	)	C.A. No. 18-924-CFC
	)	
v.	)	
	)	
AMGEN INC.,	)	
	)	
Defendant.	)	
_____	)	

**STIPULATION AND ~~PROPOSED~~ ORDER OF DISMISSAL  
WITH RESPECT TO CERTAIN ASSERTED PATENTS AND CITY OF HOPE**

WHEREAS Plaintiffs Genentech, Inc. and City of Hope filed a Second Amended Complaint in this case on January 17, 2019, which asserts infringement of eighteen patents in connection with Defendant Amgen Inc. seeking FDA approval of ABP 980 as a trastuzumab biosimilar (D.I. 75);

WHEREAS Amgen has answered the Second Amended Complaint and asserted counterclaims of non-infringement, invalidity, and/or unenforceability with respect to the eighteen patents in the Second Amended Complaint (D.I. 80);

WHEREAS Plaintiffs have moved to dismiss Amgen’s unenforceability counterclaims and strike Amgen’s Eleventh Affirmative Defense of unclean hands / inequitable conduct (D.I. 85); and

WHEREAS certain of the patents in the Second Amended Complaint have expired and, in view of this stipulation, Plaintiffs are not seeking past damages for infringement of those expired patents with respect to ABP 980;

NOW THEREFORE, it is hereby stipulated and agreed by the Parties, subject to the approval of the Court, that:

1. All claims for infringement of U.S. Patent Nos. 6,331,415, 7,923,221, 6,407,213, 6,417,335, 9,249,218, 6,121,428, and 6,620,918 (the “Dismissed Patents”) and (Counts I, II, III, IX, X, XIV, and XV of the Second Amended Complaint (D.I. 75)) are dismissed with prejudice, and all counterclaims for non-infringement, invalidity, and/or unenforceability of the Dismissed Patents (Counts 1, 2, 3, 9, 10, 14, and 15 of Amgen’s Counterclaims (D.I. 80)) with respect to ABP 980 are dismissed with prejudice;

2. Amgen withdraws its Eleventh Affirmative Defense of unclean hands / inequitable conduct as moot;

3. Plaintiffs withdraw their motion to dismiss Amgen’s unenforceability counterclaims and strike Amgen’s Eleventh Affirmative Defense with respect to Counts 1, 2, 3, 9, 10, 14, and 15 of Amgen’s Counterclaims and Amgen’s Eleventh Affirmative Defense (D.I. 85) as moot. Plaintiffs’ motion to dismiss remains pending with respect to Amgen’s remaining unenforceability counterclaims;

4. City of Hope is dismissed as a party to this case; and

5. Each party shall bear its own costs, expenses, and attorneys’ fees associated with this action with respect to the Dismissed Patents.

This stipulation does not affect the parties’ claims, counterclaims, or defenses with respect to the remaining patents-in-suit. This stipulation is for purposes of this case only and does not extend to litigation involving any other product between the parties. Neither party shall use this stipulation for any purpose in litigation between the parties relating to other products.

Dated: July 23, 2019

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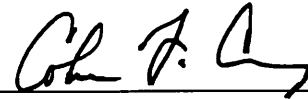
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SO ORDERED this 24<sup>th</sup> day of July, 2019.



United States District Judge