

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

GENENTECH, INC.,

Plaintiffs,

v.

AMGEN, INC.,

Defendant.

C.A. No. 18-924-CFC

**STIPULATION AND [PROPOSED] ORDER REGARDING PLAINTIFF  
GENENTECH'S THIRD AMENDED COMPLAINT**

WHEREAS, Plaintiff Genentech, Inc. ("Genentech") sought a temporary restraining order and preliminary injunction seeking to enjoin Defendant Amgen Inc.'s ("Amgen") launch of its Herceptin biosimilar product in the United States, which the Court denied on July 18, 2019, D.I. 300; and

WHEREAS, Amgen announced on July 18, 2019 that its Herceptin biosimilar product, ABP 980, is now available in the United States and being marketed as Kanjinti; and

WHEREAS, Genentech seeks leave to amend the complaint in this action to add allegations of past and ongoing infringement of the patents-in-suit under 35 U.S. C. §§ 271(a), (b), and/or (g), claims for damages due to this infringement, and a corresponding jury demand; and

WHEREAS, Genentech and Amgen previously entered stipulations removing City of Hope as a party to this lawsuit (since the patents-in-suit as to which City of Hope is a co-owner have expired) and removing certain patent claims and counterclaims, and Genentech seeks to amend the Complaint to reflect those stipulations that have been so-ordered by the Court (D.I. 325, 340); and

WHEREAS, Amgen does not oppose such amendments, which are reflected in the Third Amended Complaint attached hereto as Exhibit A;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned parties and subject to the Court's approval, that pursuant to Fed. R. Civ. P. 15(a), 15(d), 16(b) and D. Del. L.R. 15.1, and in the interests of judicial efficiency, the proposed Third Amended Complaint attached hereto as Exhibit A shall be docketed by the Court as the Third Amended Complaint and shall be deemed served upon filing. A form of the Third Amended Complaint indicating in what respects it differs from the Second Amended Complaint is attached as Exhibit B.

Dated: August 27, 2019

/s/ Daniel M. Silver

Michael P. Kelly (#2295)  
Daniel M. Silver (#4758)  
Alexandra M. Joyce (#6423)  
MCCARTER & ENGLISH, LLP  
Renaissance Centre  
405 N. King Street, 8th Floor  
Wilmington, DE 19801  
(302) 984-6300  
mkelly@mccarter.com  
dsilver@mccarter.com  
ajoyce@mccarter.com

OF COUNSEL:

William F. Lee  
Lisa J. Pirozzolo  
Emily R. Whelan  
Kevin S. Prussia  
Andrew J. Danford  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
(627) 526-6000  
william.lee@wilmerhale.com  
lisa.pirozzolo@wilmerhale.com  
emily.whelan@wilmerhale.com  
kevin.prussia@wilmerhale.com  
andrew.danford@wilmerhale.com

Robert J. Gunther Jr.  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
(212) 230-8800  
robert.gunther@wilmerhale.com

/s/ Eve H. Ormerod

Neal C. Belgam (#2721)  
Eve H. Ormerod (#5369)  
Jennifer M. Rutter (#6200)  
SMITH KATZENSTEIN & JENKINS LLP  
1000 West Street, Suite 1501  
Wilmington, DE 19801  
(302) 652-8400  
nbelgam@skjlaw.com  
eormerod@skjlaw.com  
jrutter@skjlaw.com

OF COUNSEL:

Michelle Rhyu  
Susan Krumplitsch  
Daniel Knauss  
COOLEY, LLP  
3175 Hanover Street  
Palo Alto, CA 94304-1130  
P 650-843-5287  
skrumplitsch@cooley.com  
mrhyu@cooley.com  
dknauss@cooley.com

Orion Armon  
COOLEY, LLP  
380 Interlocken Crescent, Suite 900  
Broomfield, CO 80021-8023  
(720) 566-4119  
oarmon@cooley.com

Eamonn Gardner  
COOLEY, LLP  
4401 Eastgate Mall  
San Diego, CA 92121-1909  
(858) 550-6086  
egardner@cooley.com

Daralyn J. Durie  
Adam R. Brausa  
DURIE TANGRI LLP  
217 Leidesdorff St.  
San Francisco, CA 94111  
(415) 362-6666  
ddurie@durietangri.com  
abrausa@durietangri.com

*Attorneys for Plaintiff  
Genentech, Inc.*

Nancy Gettel  
Thomas Lavery, IV  
AMGEN, INC.  
One Amgen Center Drive  
Thousand Oaks, CA 91320-1799  
P 805-447-1000  
ngettel@amgen.com  
tlavery@amgen.com

*Attorneys for Defendant Amgen, Inc.*

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

---

United States District Judge