

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

GENENTECH, INC

Plaintiff,

V.

AMGEN, INC.,

Defendant.

C.A. No. 18-924-CFC

**STIPULATION AND ~~(PROPOSED)~~ ORDER OF DISMISSAL
WITH RESPECT TO CERTAIN ASSERTED PATENTS**

WHEREAS Plaintiff Genentech, Inc. filed a Third Amended Complaint in this case on September 4, 2019, which asserts infringement of nine patents in connection with Defendant Amgen Inc. seeking FDA approval for ABP 980 as a trastuzumab biosimilar and marketing that biosimilar under the trade name Kanjinti (D.I. 347);

WHEREAS Genentech's Third Amended Complaint includes claims for infringement of U.S. Patent Nos. 7,993,834, 8,076,066, and 8,440,402;

WHEREAS the Parties desire to streamline the issues in this case for trial;

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. 7,993,834, 8,076,066, and 8,440,402 (the “Dismissed Patents”) and (Counts VI, VII, and VIII of the Third Amended Complaint (D.I. 347)) are dismissed with prejudice;

2. All counterclaims for non-infringement, invalidity, and/or unenforceability of the Dismissed Patents are dismissed without prejudice to Amgen's ability to raise such claims in a later action; and

3. 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 and shall not be admissible at trial in this case for any purpose 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: September 20, 2019

/s/ Alexandra M. Joyce

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SO ORDERED this 23rd day of September, 2019.



United States District Judge