

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GENENTECH, INC.,

Plaintiff,

v.

AMGEN INC.,

Defendant.

Case No. 18-924-CFC

PUBLIC VERSION FILED: October 4, 2019

**GENENTECH, INC.'S MOTION FOR SANCTIONS PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 37(b)**

Plaintiff Genentech, Inc., by and through its undersigned counsel, respectfully seeks an Order issuing sanctions against Defendant Amgen Inc. pursuant to Fed. R. Civ. P. 37(b). The grounds for Plaintiff's motion are set forth in the supporting opening brief filed contemporaneously herewith, along with a Proposed Order.

Dated: September 24, 2019

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GENENTECH, INC.,

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C.A. No. 18-924-CFC

**[PROPOSED] ORDER GRANTING GENENTECH, INC.’S MOTION FOR SANCTIONS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 37(b)**

The Court, having considered Genentech, Inc.’s Motion for Sanctions (the “Motion”), hereby orders that the Motion is GRANTED. The Court finds Amgen Inc. in contempt of the June 20, 2019 Order Granting Plaintiffs’ Motion to Compel (D.I. 259). It is further ORDERED that the following facts are deemed established for the purpose of this action pursuant to Fed. R. Civ. P 37(b)(2)(A):

1. Lois Kwasigroch was not aware of any errors in the Patent Trial and Appeal Board’s (“PTAB”) analysis regarding the validity of the ’196 and ’379 patents;
2. Ms. Kwasigroch was not aware of any invalidity arguments or any prior art that was not presented to and considered by the PTAB when it found that the ’196 and ’379 patents are not invalid; and
3. Ms. Kwasigroch did not have a basis for believing that the ’196, ’379, and ’811 dosing patents are invalid.

Genentech is granted leave to submit a request for attorneys' fees and costs incurred in connection with Ms. Kwasigroch's deposition and the Motion.

IT IS SO ORDERED this ____ day of _____, 2019.

Colm F. Connolly
United States District Judge

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AVERMENT OF COUNSEL

Pursuant to District of Delaware Local Rule 7.1.1, the undersigned counsel hereby certifies that counsel for Plaintiff conferred with counsel for Defendant, including verbally in one or more teleconferences involving Delaware counsel for all parties, and a reasonable effort was made to reach an agreement with the Defendant on the matters set forth in this motion.

Dated: September 24, 2019

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Respectfully Submitted,

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