


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

GENENTECH, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 18-924-CFC
)	
AMGEN INC.,)	
)	
Defendant.)	PUBLIC VERSION FILED: December 2, 2019
)	
)	

**REPLY BRIEF IN SUPPORT OF GENENTECH’S MOTION TO
STRIKE AMGEN’S ELEVENTH AND TWELFTH AFFIRMATIVE
DEFENSES (AND DISMISS, OR ALTERNATIVELY, STRIKE
ASSOCIATED COUNTERCLAIMS)**

TABLE OF CONTENTS

INTRODUCTION.....	1
ARGUMENT	3
I. Amgen Was Required To Seek Leave To Add New Defenses	3
A. The Court’s Scheduling Order Required Amgen To Seek Leave To Include Its Defenses.....	4
B. The Majority View Is To Require Amgen To Seek Leave To Add Defenses That Exceed The Breadth Of Genentech’s Amendments	6
II. The Court Should Deny Amgen Leave To Inject An Improper Inventorship Or Derivation Defense Into This Case At This Late Stage.....	9
A. Amgen Cannot Establish Good Cause Under Rule 16(b)(4).....	9
B. Amgen Also Fails To Meet The Rule 15(a) Standard	12
1. Amgen Unduly Delayed.....	12
2. Amgen’s Amendment Would Burden The Court And Unfairly Prejudice Genentech.....	13
3. Amgen’s Proposed Amendment Is Futile	15
III. The Court Should Deny Amgen Leave To Inject An Improper Inequitable Conduct Defense Into This Case At This Late Stage	15
A. Amgen Cannot Establish Good Cause Under Rule 16(b)(4).....	15
B. Amgen Also Fails To Meet The Rule 15(a) Standard	17
1. Amgen Unduly Delayed.....	17
2. Amgen’s Amendment Would Burden The Court And Unfairly Prejudice Genentech.....	18
3. Amgen’s Proposed Amendment Is Futile	19
CONCLUSION.....	19

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Am. Axle & Mfg., Inc. v. Neapco Holdings LLC,
 No. CV 15-1168-LPS, 2017 WL 3888228 (D. Del. Sept. 6, 2017)13

Cobra Int’l, Inc. v. BCNY Int’l, Inc.,
 702 F. App’x 994 (Fed. Cir. 2017)13

*Compagnie Des Grands Hôtels d’Afrique S.A. v. Starwood Capital
 Group Global I LLC*,
 No. CV 18-654-RGA, 2019 WL 4740083 (D. Del. Sept. 27, 2019).....16

Coppola v. Smith,
 2015 WL 2127965 (E.D. Cal. May 6, 2015)7

In re Frescati Shipping Co.,
 886 F.3d 291 (3d Cir. 2018), *cert. granted sub nom. CITGO
 Asphalt Ref. Co. v. Frescati Shipping Co.*, 139 S. Ct. 1599 (2019)11, 12

Johnson v. Mammoth Recreations, Inc.,
 975 F.2d 604 (9th Cir. 1992)6

Magsil Corp. v. Seagate Tech.,
 No. CV 08-940-HB, 2010 WL 2710472 (D. Del. July 7, 2010)16

Patel v. Pandya,
 2016 WL 3129615 (D.N.J. June 2, 2016).....7

Robinson v. Johnson,
 313 F.3d 128 (3d Cir. 2002)4

Sirona Dental Sys., Inc. v. Dental Imaging Techs. Corp.,
 No. CV 10-288-GMS, 2012 WL 3929949 (D. Del. Sept. 10, 2012).....4, 7, 8

Slim CD, Inc. v. Heartland Payment Sys., Inc.,
 2007 WL 2459349 (D.N.J. Aug. 24, 2007)6

Teva Pharm. USA, Inc. v. Forest Labs., Inc.,
 No. 13-cv-02002-GMS, 2016 WL 7325511 (D. Del. June 16,
 2016)4, 5, 7, 8

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 655 F.3d 1352 (Fed. Cir. 2011)7

Virginia Innovation Scis., Inc. v. Samsung Elecs. Co.,
11 F. Supp. 3d 622 (E.D. Va. 2014)8

Rules

Fed. R. Civ. P. 811
Fed. R. Civ. P. 15*passim*
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INTRODUCTION

Amgen's new defenses should be stricken because Amgen could have pursued discovery into the facts underlying those defenses well before the deadline for amended pleadings and the close of fact discovery.

Amgen essentially seeks to relitigate this Court's prior ruling rejecting Amgen's effort to pursue that discovery. D.I. 395 at 1, 412 at 1. In denying those requests, the Court rightly noted that the individual Amgen contends was an inventor—Dr. Brian Leyland-Jones—was “in [Amgen's] employ. [Amgen] could have issued ... a litany of subpoenas to depose everybody that he said he had conversations with and worked on in connection with his role in the inventorship but [Amgen] didn't do it. So the application [for discovery] is untimely and therefore, it's denied.” *See* Ex. 1 (Oct. 16, 2019 Hearing Tr.) at 207:4-9. The Court likewise rejected Amgen's reliance on an email authored by one of the named inventors—Dr. Sharon Baughman—which Amgen argued suggested Dr. Leyland-Jones conceived of the invention. *Compare* D.I. 412 at 1; Ex. 1 at 204:18-205:2 (“[Genentech's Counsel:] She didn't say he was the inventor. . . THE COURT: I agree with you.”) *with* D.I. 456 at 15. Nor did the Court credit Amgen's assertion that it could not have investigated its defenses until it learned of Dr. Baughman's email or took the deposition of one of Genentech's experts, Dr. Karen Gelmon. *Compare* D.I. 412 at 1-2 *with* D.I. 456 at 17, 19. The Court

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