

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

_____)	
GENENTECH, INC. and CITY OF HOPE,)	
)	
Plaintiffs,)	
)	C.A. No. 18-00924-CFC
v.)	
)	
AMGEN INC.,)	
)	
Defendant.)	
_____)	

**[PROPOSED] ORDER FOR DISCOVERY,
INCLUDING DISCOVERY OF ELECTRONICALLY STORED INFORMATION
("ESI")**

After conferring on these matters, the Parties hereby stipulate to the following protocol for electronic discovery:

1. Definitions

The following definitions shall apply for purposes of this agreement.

- a. "Asserted Patents" means U.S. Patent Nos. 6,407,213, 6,627,196, 7,371,379, 8,574,869, 7,993,834, 8,076,066, 6,620,918, 8,512,983, and 9,714,293, and App. No. 14/073,659. To the extent that additional patents or patent applications are asserted in this Litigation, "Asserted Patents" as used herein shall include those additional patents or patent applications.
- b. "Discovery Material" means all documents, testimony, pleadings, exhibits, and all other material or information produced or disclosed in this Litigation, including responses to requests for production of documents and/or things, answers to interrogatories, responses to

requests for admissions, documents and things made available for inspection, deposition testimony, expert testimony and reports, and all other discovery taken pursuant to the Federal Rules of Civil Procedure, including Third Party discovery pursuant to Fed. R. Civ. P. 45, matters in evidence and any other information hereafter furnished, directly or indirectly, by or on behalf of any Party, Third Party, or witness in connection with this Litigation. This Document Production Protocol and provisions herein shall apply to all Discovery Material.

c. “Document” carries its broadest meaning consistent with Fed. R. Civ. P. 34 and includes ESI, Paper Discovery, and product samples.

d. “Electronically Stored Information” or “ESI” carries its broadest possible meaning consistent with Fed. R. Civ. P. 34(a) and Fed. R. Evid. 1001.

e. “Email” means a system or network for transmitting messages electronically that will send, store, process and receive information as between computers.

f. “Format” means the internal structure of a file, which defines the way it is stored and used.

g. “Litigation” refers to the above-captioned case, *Genentech Inc., et al. v. Amgen Inc.*, C.A. No. 1:18-00924-GMS.

h. “Native Format” means the format of ESI in the application in which such ESI was originally created.

i. “Outside Counsel” means any attorney from a law firm that has at least one attorney who is then a current counsel of record for a Party in this Litigation and which Outside Counsel is not an employee of a Party or of an Affiliate.

j. “Paper Discovery” means any document or thing discoverable under Fed. R. Civ. P. 26(b)(1) and Fed. R. Civ. P. 34 that cannot be characterized as ESI.

- k. “Party” or “Parties” means Plaintiffs Genentech, Inc. and City of Hope and Defendant Amgen Inc.
- l. “Producing Party” means a Party that produces Documents.
- m. “Production Volume” means a unique alpha-numeric volume name representing a range of Documents (*i.e.*, batch) sent to the Receiving Party by the Producing Party. The Production Volume is named consecutively beginning with “[Designation Indicating Party]001” and continuing sequentially until all Documents have been produced.
- n. “Receiving Party” means a Party to whom Documents are produced.
- o. “Requesting Party” means a Party that requests Documents.
- p. “Tagged Image File Format” or “TIFF” refers to the CCITT Group IV graphic file format for storing bit-mapped images, with multiple compression formats and resolutions.

2. General Provisions

- a. **Non-ESI.** The Parties agree that nothing in this Order changes the Parties’ obligations under the Federal Rules of Civil Procedure to search for, collect, and produce non-ESI information. Such non-ESI information, including but not limited to paper, will be produced in electronic form, rendered text searchable via OCR or other means by the Producing Party, and include any file folders and/or labels.
- b. **Cooperation.** Parties are expected to reach agreements cooperatively on how to conduct discovery under Fed. R. Civ. P. 26-36. The Parties shall promptly meet and confer as frequently as appropriate to negotiate in good faith to resolve any disputes that arise under this Document Production Protocol.
- c. **Proportionality.** Parties are expected to use reasonable, good faith and

proportional efforts to preserve, identify and produce relevant information.¹ This includes identifying appropriate limits to discovery, including limits on custodians, identification of relevant subject matter, time periods for discovery and other parameters to limit and guide preservation and discovery issues.

d. Preservation of Discoverable Information. A party has a common law obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control.

(i) Absent a showing of good cause by the Requesting Party, the Parties shall not be required to modify, on a going-forward basis, the procedures used by them in the ordinary course of business to back up and archive data; provided, however, that the Parties shall preserve the non-duplicative discoverable information currently in their possession, custody or control.

(ii) Absent a showing of good cause by the Requesting Party, the categories of ESI identified in Schedule A attached hereto need not be preserved.

e. Privilege.

(i) The Parties are to confer on the nature and scope of privilege logs for the case, including whether categories of information may be excluded from any logging requirements and whether alternatives to document-by-document logs can be exchanged.

(ii) With respect to information generated after July 31, 2017, the date when Amgen announced the filing of its Biologics License Application for ABP 980, Parties are not required to include any such information in privilege logs.

(iii) The Parties will exchange privilege logs no later than 45 days after the

¹ Information can originate in any form, including ESI and paper, and is not limited to information created or stored electronically.

substantial completion of document production.

(iv) Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

(v) The production of Discovery Material that is protected data or subject to the attorney-client privilege, work-product immunity, or any other privilege or immunity, whether inadvertent or otherwise, will not waive the protection, attorney-client privilege, work-product immunity, or any other privilege or immunity in this Litigation or in any other federal or state proceeding. Further, neither the fact that the information was produced nor the content of such information shall be used in any manner as evidence in support of any such alleged waiver. If a Party has produced information subject to a claim of protection, privilege, or immunity, upon request identifying such information (“Recalled Information”), the information and all copies thereof shall be returned promptly, or a signed verification by Outside Counsel for a Receiving Party certifying that all such information and copies have been destroyed shall be provided to Outside Counsel for the Producing Party no later than fifteen days (as calculated by Fed. R. Civ. P. 6) after a request is made by the Producing Party. Moreover, any notes or summaries describing, referring to or reflecting the content of Recalled Information shall be destroyed. After the return or destruction of Recalled Information, a Receiving Party may challenge the Producing Party’s claim(s) of protection, privilege, or immunity by making an application to the Court. Such an application may rely on the description of the Recalled Information under Rule 26(b)(5)(A)(ii), but may not rely in any way on a Receiving Party’s examination of the Recalled Information, including the content of the Recalled Information ascertained during such an examination. The preceding sentence in no way forecloses a Receiving Party from requesting an *in camera* review by the Court of the Recalled Information. This order shall be interpreted to

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