

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

GENENTECH, INC. and CITY OF HOPE,

Plaintiffs,

v.

AMGEN, INC.

Defendant.

Case No. 18-CV-00924-CFC

**PUBLIC VERSION FILED: January 23, 2019**

**STIPULATION AND PROPOSED ORDER  
REGARDING SECOND AMENDED COMPLAINT**

WHEREAS, on June 21, 2018, Plaintiffs Genentech, Inc. and City of Hope (collectively, “Plaintiffs”) filed the above-captioned action against Defendant Amgen, Inc. (“Amgen”);

WHEREAS, on November 7, 2018, pursuant to this Court’s scheduling order (D.I. 44), Plaintiffs sent Amgen a letter (the “Claim Narrowing Letter”) identifying allowed claims 10 and 11 of U.S. App. No. 14/073,659 (“the ’659 application”) as among the narrowed set of patents and claims to be litigated in this case once issued by the United States Patent Office;

WHEREAS, on December 25, 2018 the United States Patent Office issued U.S. Patent No. 10,160,811 (“the ’811 patent”) from the ’659 application,

WHEREAS, claims 6 and 7 of the ’811 patent correspond to claims 10 and 11 of the ’659 application;

WHEREAS, pursuant to 42 U.S.C. § 262(l)(7), Plaintiffs have supplemented their list of patents pursuant to 42 U.S.C. § 262(l)(3)(A) to include the ’811 patent;

WHEREAS, U.S. Patent No. 8,425,908 (“the ’908 patent”), originally asserted against Amgen, has since expired and Amgen’s biosimilar product was not approved by the FDA for

marketing in the United States prior to the expiration of the '908 patent;

WHEREAS, Plaintiffs seek leave to amend the complaint in this action to (1) add a count of infringement of the '811 patent and (2) remove a count of infringement of the '908 patent, and Amgen does not oppose such amendment;

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) and D. Del. L.R. 15.1, and in the interests of judicial efficiency, the proposed second amended pleading attached hereto as Exhibit A, which adds a count of infringement of the '811 patent and removes a count of infringement of the '908 patent, shall be docketed, along with all exhibits thereto, by Plaintiffs, promptly following approval of this Stipulation by the Court, as the second amended pleading and shall be deemed served upon docketing. A form of the second amended pleading indicating in what respect it differs from the pleading which it amends is attached as Exhibit B. Pursuant to the Court's scheduling order (D.I. 44) and the Plaintiffs' Claim Narrowing Letter, the claims of the '811 patent to be litigated in this case are claims 6 and 7.

Dated: January 11, 2019

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*Attorneys for Defendant Amgen, Inc.*

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

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United States District Judge

# EXHIBIT A

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