


IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

_____	)	
GENENTECH, INC.,	)	
	)	
<i>Plaintiff and Counterclaim Defendant,</i>	)	C.A. No. 18-924-CFC
	)	
v.	)	
	)	
AMGEN INC.,	)	
	)	<b>PUBLIC VERSION FILED: August 8, 2019</b>
<i>Defendant and Counterclaim Plaintiff.</i>	)	
_____	)	

**STIPULATION AND [PROPOSED] ORDER REGARDING JUDGMENT OF  
NON-INFRINGEMENT OF U.S. PATENT NOS. 8,512,983 AND 9,714,293**

WHEREAS, Plaintiff Genentech, Inc. (“Genentech”) has asserted a claim of patent infringement against Defendant Amgen Inc. (“Amgen”) of claims 2 and 19 of U.S. Patent No. 8,512,983 (“the ’983 patent”) and of claims 72 and 73 of U.S. Patent No. 9,714,293 (“the ’293 patent”) (collectively, “the Asserted Claims”);

WHEREAS, in its Memorandum Opinion of June 14, 2019, D.I. 255, and accompanying Order, D.I. 256, the Court construed certain disputed terms in the Asserted Claims of the ’983 and ’293 patents;

WHEREAS, the Court rejected Genentech’s construction of the term “a glutamine-free production culture medium” to mean “a production culture medium that is essentially free of glutamine,” and instead determined that the term should be construed as “a culture medium used in the production phase that is not formulated or supplemented with glutamine;” D.I. 256 at 20; and

WHEREAS, the Court's construction of "a glutamine-free production culture medium" materially affects Genentech's infringement analysis for the asserted claims of the '983 and '293 patents;

WHEREAS, Genentech's position is that Amgen infringes the asserted claims of the '983 and '293 patents under Genentech's construction of "a glutamine-free production culture medium." Amgen disagrees with Genentech's position; and

WHEREAS, based on the evidence produced by Amgen in discovery, Genentech cannot sustain its burden of proof to establish infringement of the asserted claims of the '983 and '293 patents under the Court's construction of "a glutamine-free production culture medium."

NOW THEREFORE, Genentech and Amgen hereby stipulate, subject to the approval of the Court, as follows:

1. To conserve judicial resources and to avoid the time and expense of further litigation related to the '983 and '293 patents, the parties respectfully request that the Court enter judgment of non-infringement as to Counts 26 and 28 of Genentech's Second Amended Complaint, D.I. 79 in C.A. No. 18-924-CFC, asserting infringement of the '983 and '293 patents by Amgen in connection with Kanjinti.<sup>1</sup> Upon entry of final judgment resolving all claims in this action, Genentech reserves the right to appeal the judgment of non-infringement and the Court's claim construction ruling with respect to the phrase "a glutamine-free production culture medium."

2. Amgen accordingly stipulates to the dismissal of Counts 16 and 18 of its Counterclaims, D.I. 82, for declaratory judgments that the '983 and '293 patents are invalid,

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<sup>1</sup> The judgment as to these claims will become final upon entry of judgment as to all remaining claims and counterclaims in these actions.

without prejudice to renewal in the event that the Court's claim construction ruling is altered on appeal or otherwise in this action.

Respectfully submitted,

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DATED: August 2, 2019

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

\_\_\_\_\_  
United States District Judge