

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

GENENTECH, INC.,

Plaintiffs,

v.

AMGEN, INC.,

Defendant.

C.A. No. 18-924-CFC

**STIPULATION AND [PROPOSED] ORDER REGARDING PLAINTIFF
GENENTECH'S THIRD AMENDED COMPLAINT**

WHEREAS, Plaintiff Genentech, Inc. (“Genentech”) sought a temporary restraining order and preliminary injunction seeking to enjoin Defendant Amgen Inc.’s (“Amgen”) launch of its Herceptin biosimilar product in the United States, which the Court denied on July 18, 2019, D.I. 300; and

WHEREAS, Amgen announced on July 18, 2019 that its Herceptin biosimilar product, ABP 980, is now available in the United States and being marketed as Kanjinti; and

WHEREAS, Genentech seeks leave to amend the complaint in this action to add allegations of past and ongoing infringement of the patents-in-suit under 35 U.S. C. §§ 271(a), (b), and/or (g), claims for damages due to this infringement, and a corresponding jury demand; and

WHEREAS, Genentech and Amgen previously entered stipulations removing City of Hope as a party to this lawsuit (since the patents-in-suit as to which City of Hope is a co-owner have expired) and removing certain patent claims and counterclaims, and Genentech seeks to amend the Complaint to reflect those stipulations that have been so-ordered by the Court (D.I. 325, 340); and

WHEREAS, Amgen does not oppose such amendments, which are reflected in the Third Amended Complaint attached hereto as Exhibit A;

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), 15(d), 16(b) and D. Del. L.R. 15.1, and in the interests of judicial efficiency, the proposed Third Amended Complaint attached hereto as Exhibit A shall be docketed by the Court as the Third Amended Complaint and shall be deemed served upon filing. A form of the Third Amended Complaint indicating in what respects it differs from the Second Amended Complaint is attached as Exhibit B.

Dated: August 27, 2019

/s/ Daniel M. Silver

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SO ORDERED this _____ day of _____, 2019.

United States District Judge