IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

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GENENTECH, INC.,	
Plaintiff,	
v.	C.A. No. 18-924-CFC
AMGEN INC.,	
Defendant.	

NOTICE OF SERVICE OF SUBPOENAS

PLEASE TAKE NOTICE that Plaintiff Genentech, Inc. will serve the subpoenas attached hereto.

Dated: October 3, 2019

Of Counsel:

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Counsel for Plaintiff Genentech, Inc.

for the

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	District	of Delawa	are		
Ar	entech, Inc. Plaintiff V. ngen Inc. Defendant))))	Civil Action No.	18-924-CFC	
Si	UBPOENA TO TESTIFY AT A	A DEPOS	SITION IN A CIV	IL ACTION	
To:	Cancer and 3851 Katella Ave	d Blood S #125, Los	pecialty Clinic	20	
deposition to be taken in	U ARE COMMANDED to appoint this civil action. If you are an odesignate other persons who considerates:	rganizatio	on, you must desig	nate one or more	officers, directors,
Place: Wilmer Cutler P 350 S. Grand A Los Angeles, Ca			Date and Time:	0/14/2019 9:00 a	am
The deposition v	will be recorded by this method:	Videogr	apher and stenog	rapher	
	ou, or your representatives, must a ored information, or objects, and				
Rule 45(d), relating to y	rovisions of Fed. R. Civ. P. 45 arour protection as a person subject and the potential consequences	t to a subp	ooena; and Rule 4:	•	-
Date:10/03/2019	CLERK OF COURT		OR	′s/ Nora Q.E. Pas	ssamaneck
	Signature of Clerk or Deputy	Clerk		Attorney's sig	nature
The name, address, e-ma	ail address, and telephone numbe	r of the at	• 1	g (name of party) es or requests this	Genentech, Inc.
	nora.passamaneck@wilmerhale	e.com, (72	·	130000	- r,

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

☐ I returned the subpoena Unless the subpoena was in	1.11			
Unless the subpoena was is tendered to the witness the	y delivering a copy to the na	med individual as follows:		
Unless the subpoena was intendered to the witness the		on (date)	; or	
tendered to the witness the	unexecuted because:			
·	ssued on behalf of the United fees for one day's attendance		_	
fees are \$	for travel and \$	for services, for a	a total of \$	0.00
I declare under penalty of	perjury that this information	is true.		
e:		Server's signatur	0	_
		server's signature	E	
		Printed name and ti	itle	

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

for the

District of Delaware

Genentech, Inc.	
Plaintiff)	
v.)	Civil Action No. 18-924-CFC
Amgen Inc.	
,)	
Defendant)	
SUBPOENA TO PRODUCE DOCUMENTS, OR TO PERMIT INSPECTION OF PRE	
To: Cancer and Blood Sp 3851 Katella Ave #125, Los	
(Name of person to whom this	subpoena is directed)
Production: YOU ARE COMMANDED to produce at the documents, electronically stored information, or objects, and to permaterial: See Schedule A	rmit inspection, copying, testing, or sampling of the
Place: Wilmer Cutler Pickering Hale & Dorr LLP	Date and Time:
350 S. Grand Ave #2100	10/14/2019 9:00 am
Los Angeles, CA 90071	10/ 14/2013 3.00 am
☐ Inspection of Premises: YOU ARE COMMANDED to pother property possessed or controlled by you at the time, date, and may inspect, measure, survey, photograph, test, or sample the property Place:	l location set forth below, so that the requesting party
The following provisions of Fed. R. Civ. P. 45 are attached Rule 45(d), relating to your protection as a person subject to a subprespond to this subpoena and the potential consequences of not do	poena; and Rule 45(e) and (g), relating to your duty to
Date:10/03/2019	
CLERK OF COURT	
CLERK OF COOKI	OR
	/s/ Nora Q.E. Passamaneck
Signature of Clerk or Deputy Clerk	Attorney's signature
The name, address, e-mail address, and telephone number of the at	torney representing (name of party) Genentech, Inc.
The hame, address, e man address, and telephone number of the at	, who issues or requests this subpoena, are:
Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (7	² 20) 274-3135

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

☐ I served the su	bpoena by delivering a copy to the name	med person as follows:	
		on (date) ;	or
·	subpoena unexecuted because:		
		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
\$	·		
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under pe	enalty of perjury that this information	is true.	
e:		Server's signature	
		Printed name and title	

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

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- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
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- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
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 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Cancer and Blood Specialty Clinic produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Cancer and Blood Specialty Clinic, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Cancer and Blood Specialty Clinic covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

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	District	of Delaw	are		
Pla Amg	ntech, Inc. aintiff v. gen Inc.))))	Civil Action No.	18-924-CFC	
SU	BPOENA TO TESTIFY AT	A DEPOS	SITION IN A CIV	IL ACTION	
То:	Caribbear 2225 Ponce By Pass, Edificio	n Cancer (Parra Suit	Care Services	17, Puerto Rico	
deposition to be taken in t	his civil action. If you are an osignate other persons who comment:	organizatio	on, you must desig	nate one or more	officers, directors,
Place: Verbatim Reportin			Date and Time:		
1314 Ponce de Lo San Juan, PR 009	eon Ave., Third Floor 907		1	0/14/2019 9:00 a	m
The deposition wi	ill be recorded by this method:	Videogi	apher and stenog	rapher	
	, or your representatives, must red information, or objects, and	_	•	•	_
Rule 45(d), relating to you	ovisions of Fed. R. Civ. P. 45 a ar protection as a person subject and the potential consequences	ct to a subj	ooena; and Rule 45	-	-
Date:10/03/2019	CLERK OF COURT		OR		
				s/ Nora Q.E. Pas	samaneck
	Signature of Clerk or Deputy	, Clerk		Attorney's sign	nature
The name, address, e-mail	address, and telephone number	er of the at	• •	g (name of party)	Genentech, Inc.
	ora.passamaneck@wilmerhal	e.com, (72		1 1	· F, 52-2-

Notice to the person who issues or requests this subpoena

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AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

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(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

☐ I returned the subpoena Unless the subpoena was in	1.11			
Unless the subpoena was is tendered to the witness the	y delivering a copy to the na	med individual as follows:		
Unless the subpoena was intendered to the witness the		on (date)	; or	
tendered to the witness the	unexecuted because:			
·	ssued on behalf of the United fees for one day's attendance		_	
fees are \$	for travel and \$	for services, for a	a total of \$	0.00
I declare under penalty of	perjury that this information	is true.		
e:		Server's signatur	0	_
		server's signature	E	
		Printed name and ti	itle	

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

for the

Distri	ict of Delaware
Genentech, Inc. Plaintiff V. Amgen Inc. Defendant))
	CUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTIO	N OF PREMISES IN A CIVIL ACTION
10.	an Cancer Care Services o Parra Suite 101, Ponce, 00717, Puerto Rico
(Name of perso	on to whom this subpoena is directed)
documents, electronically stored information, or object material: See Schedule A	roduce at the time, date, and place set forth below the following ts, and to permit inspection, copying, testing, or sampling of the
Place: Verbatim Reporting	Date and Time:
1314 Ponce de Leon Ave., Third Floor San Juan, PR 00907	10/14/2019 9:00 am
other property possessed or controlled by you at the time	NDED to permit entry onto the designated premises, land, or me, date, and location set forth below, so that the requesting party aple the property or any designated object or operation on it. Date and Time:
	are attached – Rule 45(c), relating to the place of compliance; lect to a subpoena; and Rule 45(e) and (g), relating to your duty to es of not doing so.
CLERK OF COURT	OR
	/s/ Nora Q.E. Passamaneck
Signature of Clerk or Depu	
The name, address, e-mail address, and telephone numbers. Nora Q.E. Passamaneck, nora.passamaneck@wilmerl	, who issues or requests this subpoena, are:
14014 Q.E. I 4004III allock, Hola.passamaneck@wiinlen	naio.com, (120) 217 0100

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	·		
☐ I served the su	bpoena by delivering a copy to the nar	med person as follows:	
		on (date) ;	or
☐ I returned the	subpoena unexecuted because:		
tendered to the w		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under pe	enalty of perjury that this information i	s true.	
e:	_	Server's signature	
		Printed name and title	
		1 rmea name ana ime	
		Server's address	

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

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- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- **(A)** *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Caribbean Cancer Care Services produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Caribbean Cancer Care Services its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Caribbean Cancer Care Services covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

for the

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	District	of Delaw	are		
An	entech, Inc. Plaintiff V. ngen Inc. efendant))))	Civil Action No.	18-924-CFC	
SI	UBPOENA TO TESTIFY AT A	A DEPOS	SITION IN A CIV	VIL ACTION	
To:	Global Ca 9460 N. Nan	ncer Rese ne Uno, G	earch Institute ilroy, CA 95020 subpoena is directed,		
deposition to be taken in	U ARE COMMANDED to app this civil action. If you are an oblesignate other persons who conschment:	organizatio	on, you must desig	nate one or more	officers, directors,
Place: Wilmer Cutler P 1 Front St. Suite San Francisco,			Date and Time:	10/14/2019 9:00 a	am
The deposition v	will be recorded by this method:	Videog	apher and stenog	rapher	
	u, or your representatives, must ored information, or objects, and	_	•	•	_
Rule 45(d), relating to ye	rovisions of Fed. R. Civ. P. 45 at our protection as a person subject and the potential consequences	t to a subj	ooena; and Rule 4.	•	-
Date:10/03/2019	CLERK OF COURT		OR	/s/ Nora Q.E. Pas	ssamaneck
	Signature of Clerk or Deputy	Clerk		Attorney's sig	nature
The name, address, e-ma	nil address, and telephone numbe	r of the at	• 1	ng (name of party) es or requests this	Genentech, Inc.
	nora.passamaneck@wilmerhale	e.com, (72		•	•

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

	I returned the subpoer	by delivering a copy to the na	on (date)	; or	
	I returned the subpoer	na unexecuted because:			
	aless the subpoena was				
	_	issued on behalf of the United	d States, or one of its offi	icers or agents, I	have also
	dered to the witness th	ne fees for one day's attendance	ce, and the mileage allow	ed by law, in the	
fees are	e \$	for travel and \$	for services, for	or a total of \$	0.00
I d	eclare under penalty o	f perjury that this information	is true.		
e:			Server's signa		
			server s signu	ture	
			Printed name an	nd title	
			Server's addr		

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
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- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

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- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

for the District of Delaware

Distri	ict of Delay	vare	
Genentech, Inc. Plaintiff v. Amgen Inc.	-))))	Civil Action No.	18-924-CFC
Defendant)		
SUBPOENA TO PRODUCE DOC OR TO PERMIT INSPECTIO			
10.		earch Institute	
		Gilroy, CA 95020 is subpoena is directed	0
Production: YOU ARE COMMANDED to p documents, electronically stored information, or object material: See Schedule A	roduce at the ts, and to pe	he time, date, and permit inspection, co	place set forth below the following opying, testing, or sampling of the
Place: Wilmer Cutler Pickering Hale & Dorr LLP 350 S. Grand Ave #2100 Los Angeles, CA 90071		Date and Time:	0/14/2019 9:00 am
☐ Inspection of Premises: YOU ARE COMMA other property possessed or controlled by you at the tir may inspect, measure, survey, photograph, test, or sam Place:	me, date, an	nd location set forth	below, so that the requesting party
The following provisions of Fed. R. Civ. P. 45 Rule 45(d), relating to your protection as a person subjrespond to this subpoena and the potential consequence	ject to a sub	ppoena; and Rule 4	
Date:10/03/2019			
CLERK OF COURT			
		OR	
Cionatina of Classes Day	uto Clarit		/s/ Nora Q.E. Passamaneck
Signature of Clerk or Dept	ину Стекк		Attorney's signature
The name, address, e-mail address, and telephone num	ber of the a		es or requests this subpoena, are:
Nora Q.E. Passamaneck, nora.passamaneck@wilmer	hale.com, (720) 274-3135	

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	bpoena for (name of individual and title, if a	uny)	
<u> </u>	·		
☐ I served the su	abpoena by delivering a copy to the na	med person as follows:	
		on (date) ;	or
☐ I returned the	subpoena unexecuted because:		
		d States, or one of its officers or agents, I se, and the mileage allowed by law, in the	
	·		
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under p	enalty of perjury that this information	is true.	
e:			
e:		Server's signature	
te:			
e:		Server's signature Printed name and title	
e:			

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Global Cancer Research Institute produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Global Cancer Research Institute, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Global Cancer Research Institute covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

United States District Court

for the

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	District	of Delawa	are		
<i>P</i>	entech, Inc. Plaintiff V. ngen Inc. efendant))))	Civil Action No.	18-924-CFC	
	-	A DEDOG	SITION IN A CIN	II ACTION	
St	JBPOENA TO TESTIFY AT	A DEPUS	OTTION IN A CIV	IL ACTION	
To:	6000 Hospital	Drive, Ha	care Systems, Inc nnibal, MO 63401 subpoena is directed)		
deposition to be taken in	U ARE COMMANDED to app this civil action. If you are an obsignate other persons who considered	organizatio	on, you must desig	nate one or more	officers, directors,
Place: Alaris Litigation			Date and Time:		
2511 Broadway Columbia, MO 6	Bluffs Dr, Suite 201 5201		1	0/14/2019 9:00 a	am
The deposition w	vill be recorded by this method:	Videogr	apher and stenog	rapher	
	u, or your representatives, must ored information, or objects, and	_	•	•	_
Rule 45(d), relating to yo	rovisions of Fed. R. Civ. P. 45 a our protection as a person subjec- and the potential consequences	ct to a subp	ooena; and Rule 4:		-
Date:10/03/2019	CLERK OF COURT		O.D.		
			OR	/s/ Nora Q.E. Pas	ssamaneck
	Signature of Clerk or Deputy	, Clerk	<u> </u>	Attorney's sig	
The name, address, e-ma	il address, and telephone numbe	er of the at	• 1	g (name of party) es or requests this	Genentech, Inc.
	nora.passamaneck@wilmerhal	e.com, (72		of requests tills	, suopoena, are.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

☐ I returned the subpoena Unless the subpoena was in				
Unless the subpoena was it tendered to the witness the	by delivering a copy to the na	med individual as follows:		
Unless the subpoena was itendered to the witness the		on (date)	; or	
tendered to the witness the	unexecuted because:			
	ssued on behalf of the United te fees for one day's attendance		_	
fees are \$	for travel and \$	for services, for a	a total of \$	0.00
I declare under penalty of	perjury that this information	is true.		
e:		Server's signature	2	
		server s signature		
		Printed name and ti	itle	

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

United States District Court

for the

Genentech, Inc.	
Plaintiff)	Civil Action No. 18-924-CFC
v.) Amgen Inc.)	Civil Action No. 18-924-CFC
Amgentine.	
Defendant)	
SUBPOENA TO PRODUCE DOCUMENTS OR TO PERMIT INSPECTION OF PRE	
To: Hannibal Regional Health 6000 Hospital Drive, Ha	
(Name of person to whom this	s subpoena is directed)
documents, electronically stored information, or objects, and to pe material: See Schedule A	
Place: Alaris Litigation	Date and Time:
2511 Broadway Bluffs Dr, Suite 201 Columbia, MO 65201	10/14/2019 9:00 am
☐ Inspection of Premises: YOU ARE COMMANDED to p other property possessed or controlled by you at the time, date, and may inspect, measure, survey, photograph, test, or sample the prop	d location set forth below, so that the requesting party
Tacc.	Date and Time.
The following provisions of Fed. R. Civ. P. 45 are attache Rule 45(d), relating to your protection as a person subject to a sub respond to this subpoena and the potential consequences of not do Date:10/03/2019	poena; and Rule 45(e) and (g), relating to your duty to
CLERK OF COURT	
CLERK OF COOK!	OR
	/s/ Nora Q.E. Passamaneck
Signature of Clerk or Deputy Clerk	Attorney's signature
The name, address, e-mail address, and telephone number of the a	ttorney representing (name of party) Genentech, Inc.
	, who issues or requests this subpoena, are:
Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (7	720) 274-3135

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	abpoena for (name of individual and title, if an	ny)	
<u> </u>	·		
\Box I served the su	ubpoena by delivering a copy to the nar	med person as follows:	
		on (date) ;	or
☐ I returned the	subpoena unexecuted because:		
		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
	·		
fees are \$	for travel and \$	for services, for a total of \$	0.00
	enalty of perjury that this information i	is true.	
I declare under p	J 1 J J		
I declare under p		Server's signature	
		Server's signature	
		Server's signature	

Additional information regarding attempted service, etc.:

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action(Page 3)

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- **(A)** *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Hannibal Regional Healthcare Systems, Inc. produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Hannibal Regional Healthcare Systems, Inc., its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Hannibal Regional Healthcare Systems, Inc. covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

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	District o	of Delawa	re		
	entech, Inc. Plaintiff)			
	V.) (Civil Action No.	18-924-CFC	
Aı	mgen Inc.)			
I	Defendant)			
S	UBPOENA TO TESTIFY AT A	DEPOS	ITION IN A CIV	VIL ACTION	
To:		-	logy Clinic	70000	
	8595 Picardy Ave Sui (Name of person to		aton Rouge, LA 1 subpoena is directed,		
	n this civil action. If you are an or designate other persons who conse chment:				
Place: Baton Rouge C			Date and Time:		
12016 Justice A Baton Rouge L			1	10/14/2019 9:00 a	ım
The deposition	will be recorded by this method:	Videogra	apher and stenog	rapher	
	ou, or your representatives, must all cored information, or objects, and r	_	•	•	_
Rule 45(d), relating to y	provisions of Fed. R. Civ. P. 45 are our protection as a person subject a and the potential consequences of	to a subp	oena; and Rule 4	•	-
Date: 10/03/2019					
	CLERK OF COURT				
			OR		
		G1 1		/s/ Nora Q.E. Pas	
	Signature of Clerk or Deputy C	Ierk		Attorney's sig	nature
The name, address, e-m	ail address, and telephone number	of the att		-	Genentech, Inc.
		/=-		es or requests this	suopoena, are:
	, nora.passamaneck@wilmerhale. uite 2600. Denver. CO 80202	.00111, (120)		

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this su	bpoena for (name of individual and title, if an	ıy)							
☐ I served the su	☐ I served the subpoena by delivering a copy to the named individual as follows:								
		on (date)	; or						
☐ I returned the	subpoena unexecuted because:								
tendered to the w	ena was issued on behalf of the United itness the fees for one day's attendance	*	•						
fees are \$	for travel and \$	for services, fo	or a total of \$	0.00					
I declare under po	enalty of perjury that this information i	s true.							
e:		Server's signa	ture						
		Printed name an	ed title						
		Server's addr	ess						

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
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- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
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(e) Duties in Responding to a Subpoena.

- (1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:
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United States District Court

for the

District of Delaware

Genentech, Inc.	
Plaintiff) V.) Amgen Inc.) Defendant)	Civil Action No. 18-924-CFC
SUBPOENA TO PRODUCE DOCUMEN' OR TO PERMIT INSPECTION OF P	
To: Hematology/O 8595 Picardy Ave Suite 40	
Production: YOU ARE COMMANDED to produce a documents, electronically stored information, or objects, and to material: See Schedule A	t the time, date, and place set forth below the following permit inspection, copying, testing, or sampling of the
Place: Baton Rouge Court Reporters 12016 Justice Avenue Baton Rouge LA 70816	Date and Time: 10/14/2019 9:00 am
☐ Inspection of Premises: YOU ARE COMMANDED to other property possessed or controlled by you at the time, date, may inspect, measure, survey, photograph, test, or sample the p	and location set forth below, so that the requesting party
Place:	Date and Time:
The following provisions of Fed. R. Civ. P. 45 are attacked Rule 45(d), relating to your protection as a person subject to a serespond to this subpoena and the potential consequences of not Date: 10/03/2019	subpoena; and Rule 45(e) and (g), relating to your duty to
CLERK OF COURT Signature of Clerk or Deputy Clerk	OR /s/ Nora Q.E. Passamaneck Attorney's signature
The name, address, e-mail address, and telephone number of th	
· · · · · · · · · · · · · · · · · · ·	, who issues or requests this subpoena, are:
Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com	n, (720) 274-3135

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AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	·		
☐ I served the su	bpoena by delivering a copy to the na	med person as follows:	
		on (date)	or
☐ I returned the	subpoena unexecuted because:		
tendered to the w		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under po	enalty of perjury that this information	is true.	
»:		Server's signature	
		server s signature	
		Printed name and title	
		Server's address	

Additional information regarding attempted service, etc.:

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action(Page 3)

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

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- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
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- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Hematology/Oncology Clinic produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to
 Hematology/Oncology Clinic, its corporate parents, corporate predecessors, corporate
 successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers,
 directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and
 each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Hematology/Oncology Clinic covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

United States District Court

for the

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	District of Delawar	e		
Genentech, Inc. Plaintiff V. Amgen Inc. Defendant)))) ()	ivil Action No.	18-924-CFC	
SUBPOENA TO TEST	LIEV AT A DEDOSI	TION IN A CIV	JII ACTION	
_			IL ACTION	
412	Hematology Oncology W. Carroll Ave., Glen to of person to whom this s	dora, CA 91741)	
Testimony: YOU ARE COMMAND deposition to be taken in this civil action. If you are managing a gents, or designate other paragraphs.	ou are an organization	, you must desig	nate one or more	officers, directors,
or managing agents, or designate other persons those set forth in an attachment: See Schedule B.	s who consent to testi	y on your benan	about the follow	ing matters, or
Place: Wilmer Cutler Pickering Hale & Dorr L	.LP	Date and Time:		
350 S. Grand Ave #2100 Los Angeles, CA 90071			10/14/2019 9:00 a	ım
The deposition will be recorded by thi	s method: Videogra	pher and stenog	rapher	
☐ <i>Production:</i> You, or your representation electronically stored information, or of material:	_	•	•	_
The following provisions of Fed. R. C Rule 45(d), relating to your protection as a per respond to this subpoena and the potential con	son subject to a subpo	ena; and Rule 4		
Date:10/03/2019	r			
		OR	/s/ Nora Q.E. Pas	comonock
Signature of Cle.	rk or Deputy Clerk		Attorney's sign	
The name, address, e-mail address, and telepho		• •	g (name of party)	Genentech, Inc.
Nora Q.E. Passamaneck, nora.passamaneck@	wilmerhale.com. (720		es or requests this	subpoena, are:
225 Seventeenth St. Suite 2600 Denver CO.		•		

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

☐ I returned the subpoena Unless the subpoena was in	1.11			
Unless the subpoena was is tendered to the witness the	y delivering a copy to the na	med individual as follows:		
Unless the subpoena was intendered to the witness the		on (date)	; or	
tendered to the witness the	unexecuted because:			
·	ssued on behalf of the United fees for one day's attendance		_	
fees are \$	for travel and \$	for services, for a	a total of \$	0.00
I declare under penalty of	perjury that this information	is true.		
e:		Server's signatur	0	
		server's signature	E	
		Printed name and ti	itle	

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- (A) *Documents*. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

United States District Court

for the

District of Dela	aware
Genentech, Inc.	Civil Action No. 18-924-CFC
SUBPOENA TO PRODUCE DOCUMENT OR TO PERMIT INSPECTION OF PR	REMISES IN A CIVIL ACTION
To: Hematology Onco 412 W. Carroll Ave., G	
(Name of person to whom t	
Production: YOU ARE COMMANDED to produce at documents, electronically stored information, or objects, and to produce at material: See Schedule A	the time, date, and place set forth below the following permit inspection, copying, testing, or sampling of the
Place: Wilmer Cutler Pickering Hale & Dorr LLP 350 S. Grand Ave #2100 Los Angeles, CA 90071	Date and Time: 10/14/2019 9:00 am
☐ Inspection of Premises: YOU ARE COMMANDED to other property possessed or controlled by you at the time, date, a may inspect, measure, survey, photograph, test, or sample the preparate:	and location set forth below, so that the requesting party
The following provisions of Fed. R. Civ. P. 45 are attack Rule 45(d), relating to your protection as a person subject to a surespond to this subpoena and the potential consequences of not on Date:10/03/2019	abpoena; and Rule 45(e) and (g), relating to your duty to
CLERK OF COURT	OR /s/ Nora Q.E. Passamaneck
Signature of Clerk or Deputy Clerk	Attorney's signature
The name, address, e-mail address, and telephone number of the	attorney representing (name of party) Genentech, Inc. , who issues or requests this subpoena, are:
Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com,	(720) 274-3135
· · · · · · · · · · · · · · · · · · ·	

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

☐ I served the su	bpoena by delivering a copy to the name	med person as follows:	
		on (date) ;	or
·	subpoena unexecuted because:		
		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
\$	·		
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under pe	enalty of perjury that this information	is true.	
e:		Server's signature	
		Printed name and title	

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

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- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
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- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

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- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- **(A)** *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Hematology Oncology Specialists produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Hematology Oncology Specialists, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff
Genentech Inc. hereby requests the deposition of Hematology Oncology Specialists covering
the following topics. The definitions in Schedule A are expressly incorporated here by
reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

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	District	of Delaw	are		
Ar	entech, Inc. Plaintiff V. mgen Inc. Defendant))))	Civil Action No.	18-924-CFC	
L	rejenaani	,			
S	UBPOENA TO TESTIFY AT A	A DEPOS	SITION IN A CIV	VIL ACTION	
To:	1473 Ford \$	Št, Redlar	gy Specialists nds, CA 92373 subpoena is directed,)	
deposition to be taken in	U ARE COMMANDED to appear this civil action. If you are an ordesignate other persons who conschment:	rganizatio	on, you must desig	nate one or more	e officers, directors,
Place: Wilmer Cutler F 350 S. Grand A	Pickering Hale & Dorr LLP ve #2100		Date and Time:	10/14/2019 9:00 a	am
Los Angeles, C	A 90071			10/11/2010 0:00 0	****
The deposition	will be recorded by this method:	Videog	apher and stenog	rapher	
	ou, or your representatives, must a ored information, or objects, and	_	•	•	_
Rule 45(d), relating to y	provisions of Fed. R. Civ. P. 45 are our protection as a person subject and the potential consequences	t to a subj	ooena; and Rule 4		
Date:10/03/2019	CLERK OF COURT				
			OR	/ /N 055	
	Signature of Clerk or Deputy	Clerk		/s/ Nora Q.E. Pas Attorney's sig	
The name, address, e-ma	ail address, and telephone numbe		• 1		Genentech, Inc.
	, nora.passamaneck@wilmerhale uite 2600. Denver. CO 80202	e.com, (72		or requests this	, suopoenu, are.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this su	bpoena for (name of individual and title, if an	ıy)		
☐ I served the su	abpoena by delivering a copy to the nar	ned individual as follow	/s:	
		on (date)	; or	
☐ I returned the	subpoena unexecuted because:			
tendered to the w	ena was issued on behalf of the United itness the fees for one day's attendance		U ,	
fees are \$	for travel and \$	for services, fo	or a total of \$	0.00
I declare under po	enalty of perjury that this information i	s true.		
e:		Server's signa	ture	
		Printed name an	nd title	
		Server's addr	ess	

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

United States District Court

for the

D	istrict	of	Del	law	ar

Genentech, Inc.)
Plaintiff	,)
v.	Civil Action No. 18-924-CFC
Amgen Inc.	
Defendant)
CURROEN'A TO REODUCE ROCUME	ENTE INFORMATION OF ORIENTS
OR TO PERMIT INSPECTION OF	ENTS, INFORMATION, OR OBJECTS
OR TO FERMIT INSPECTION OF	FREMISES IN A CIVIL ACTION
	incology Specialists Redlands, CA 92373
(Name of person to wh	nom this subpoena is directed)
Production: VOII APE COMMANDED to produc	e at the time, date, and place set forth below the following
documents, electronically stored information, or objects, and	I to permit inspection, conving testing or sampling of the
material: See Schedule A	to permit inspection, copying, testing, or sampling of the
Diagrams of British and The British	Date and Time:
Place: Wilmer Cutler Pickering Hale & Dorr LLP 350 S. Grand Ave #2100	Date and Time.
Los Angeles, CA 90071	10/14/2019 9:00 am
2007 (1190100), 071 0007 1	
☐ Inspection of Premises: YOU ARE COMMANDE	D to permit entry onto the designated premises, land, or
other property possessed or controlled by you at the time, da	
may inspect, measure, survey, photograph, test, or sample th	e property or any designated object or operation on it.
N	D. (1 T'
Place:	Date and Time:
The following provisions of Fed. R. Civ. P. 45 are at	ttached – Rule 45(c), relating to the place of compliance;
Rule 45(d), relating to your protection as a person subject to	
respond to this subpoena and the potential consequences of r	
10/02/2010	
Date:10/03/2019	
CLERK OF COURT	
	OR
	/s/ Nora Q.E. Passamaneck
Signature of Clerk or Deputy Cler	rk Attorney's signature
The name, address, e-mail address, and telephone number of	The attorney representing (name of party) Genentech, Inc.
	, who issues or requests this subpoena, are:
Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.c	om, (720) 274-3135

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

☐ I served the su	bpoena by delivering a copy to the name	med person as follows:	
		on (date) ;	or
·	subpoena unexecuted because:		
		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
\$	·		
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under pe	enalty of perjury that this information	is true.	
e:		Server's signature	
		Printed name and title	

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- **(A)** *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Hematology Oncology Specialists produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Hematology Oncology Specialists, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff
Genentech Inc. hereby requests the deposition of Hematology Oncology Specialists covering
the following topics. The definitions in Schedule A are expressly incorporated here by
reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

United States District Court

for the

D	CD	1
District	At 1 10	laware
District	OIDC	iawait

	District of	of Delawa	re		
Ar	entech, Inc. Plaintiff V. ngen Inc. Defendant))))	Civil Action No.	18-924-CFC	
S	UBPOENA TO TESTIFY AT A	DEPOS	ITION IN A CIV	VIL ACTION	
To:	One Kaiser Pl (Name of person to	whom this	and, CA 94612 subpoena is directed,		
deposition to be taken in	U ARE COMMANDED to appear this civil action. If you are an ordesignate other persons who consciputes:	rganizatio	n, you must desig	nate one or more	officers, directors,
Place: Wilmer Cutler F 1 Front St Suite San Francisco,			Date and Time:	10/14/2019 9:00 a	am
The deposition	will be recorded by this method:	Videogra	apher and stenog	rapher	
	ou, or your representatives, must a ored information, or objects, and	_	•	•	_
Rule 45(d), relating to y	rovisions of Fed. R. Civ. P. 45 are our protection as a person subject a and the potential consequences of	t to a subp	oena; and Rule 4		
Date:10/03/2019	CLERK OF COURT		OR		
	Signature of Clerk or Deputy (Clork		/s/ Nora Q.E. Pas Attorney's sig	
The name address e-ma	ail address, and telephone number		ornev representin	, ,	Genentech, Inc.
The nume, address, c-ma	an address, and telephone number	or the att	• •	es or requests this	
	nora.passamaneck@wilmerhale. uite 2600. Denver. CO 80202	.com, (720	0) 274-3135,		

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I served the subpoena by delivering a copy to the named individual as follows: on (date) ; or I returned the subpoena unexecuted because: Unless the subpoena was issued on behalf of the United States, or one of its officers or agent tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in My fees are \$ for travel and \$ for services, for a total of \$ I declare under penalty of perjury that this information is true.	s, I have also
Unless the subpoena was issued on behalf of the United States, or one of its officers or agent tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in \$ If y fees are \$ for travel and \$ for services, for a total of \$	s, I have also
Unless the subpoena was issued on behalf of the United States, or one of its officers or agent tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in \$ y fees are \$ for travel and \$ for services, for a total of \$	s, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in \$ fees are \$ for travel and \$ for services, for a total of \$	
I declare under penalty of perjury that this information is true.	0.00
e:	
Server's signature	
Printed name and title	
Server's address	

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- **(A)** *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

United States District Court

for the

District of Delaware

Genentech, Inc.	
Amgen Inc.)	Civil Action No. 18-924-CFC
Defendant)	
SUBPOENA TO PRODUCE DOCUMENTS. OR TO PERMIT INSPECTION OF PRE	
To: Kaiser Perma One Kaiser Plaza, Oak	
(Name of person to whom this	s subpoena is directed)
Production: YOU ARE COMMANDED to produce at the documents, electronically stored information, or objects, and to permaterial: See Schedule A	e time, date, and place set forth below the following rmit inspection, copying, testing, or sampling of the
Place: Wilmer Cutler Pickering Hale & Dorr LLP	Date and Time:
1 Front St Suite 3500 San Francisco, CA 94111	10/14/2019 9:00 am
☐ Inspection of Premises: YOU ARE COMMANDED to p other property possessed or controlled by you at the time, date, and may inspect, measure, survey, photograph, test, or sample the property Place:	d location set forth below, so that the requesting party
Tidee.	Date and Time.
The following provisions of Fed. R. Civ. P. 45 are attache Rule 45(d), relating to your protection as a person subject to a sub respond to this subpoena and the potential consequences of not do Date: 10/03/2019	poena; and Rule 45(e) and (g), relating to your duty to
CLERK OF COURT	OR
Signature of Clerk or Deputy Clerk	/s/ Nora Q.E. Passamaneck Attorney's signature
The name, address, e-mail address, and telephone number of the ar	ttorney representing (name of party) Genentech, Inc.
	, who issues or requests this subpoena, are:
Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (7	720) 274-3135,

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	·		
☐ I served the su	ubpoena by delivering a copy to the na	med person as follows:	
		on (date) ;	or
☐ I returned the	subpoena unexecuted because:		
tendered to the w		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under p	enalty of perjury that this information	is true.	
e:		Server's signature	
		server s signature	
		Printed name and title	
		Server's address	

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action(Page 3)

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- **(A)** *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Kaiser Permanente produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Kaiser Permanente, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Kaiser Permanente covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

D	CD	
District	01 I IA	2337216
District	$o_1 b_0$	ıawaıv

	District	of Delaw	rare		
	entech, Inc.)			
	v.)	Civil Action No.	18-924-CFC	
Ar	mgen Inc.)			
L	Defendant)			
S	UBPOENA TO TESTIFY AT A	A DEPOS	SITION IN A CIV	IL ACTION	
To:			dical Group		
	11180 Warner Ave #		intain Valley, CA 9 s subpoena is directed)		
	n this civil action. If you are an or designate other persons who const chment:				
	Pickering Hale and Dorr, LLP		Date and Time:		
350 S Grand Av Los Angeles, C			1	0/14/2019 9:00 a	am
The deposition	will be recorded by this method:	Videog	rapher and stenog	rapher	
	ou, or your representatives, must ored information, or objects, and	_		•	_
Rule 45(d), relating to y	provisions of Fed. R. Civ. P. 45 are our protection as a person subject a and the potential consequences	t to a subj	poena; and Rule 45		
Date:10/03/2019					
	CLERK OF COURT		O.D.		
			OR	s/ Nora Q.E. Pas	ssamaneck
	Signature of Clerk or Deputy	Clerk		Attorney's sig	
The name, address, e-ma	ail address, and telephone numbe	r of the a		_	Genentech, Inc.
			, who issue	es or requests this	s subpoena, are:
	, nora.passamaneck@wilmerhale uite 2600. Denver. CO 80202	e.com, (72	20) 274-3135		

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

☐ I returned the subpoena Unless the subpoena was in	1.11			
Unless the subpoena was is tendered to the witness the	y delivering a copy to the na	med individual as follows:		
Unless the subpoena was intendered to the witness the		on (date)	; or	
tendered to the witness the	unexecuted because:			
·	ssued on behalf of the United fees for one day's attendance		_	
fees are \$	for travel and \$	for services, for a	a total of \$	0.00
I declare under penalty of	perjury that this information	is true.		
e:		Server's signatur	0	_
		server's signature	E	
		Printed name and ti	itle	

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

United States District Court

for the

District of Delaware

Genentech, Inc.	
Plaintiff)	
v.)	Civil Action No. 18-924-CFC
Amgen Inc.	
Defendant)	
SUBPOENA TO PRODUCE DOCUMENT OR TO PERMIT INSPECTION OF PE	
To: Lalita Pandit M 11180 Warner Ave #467, F	
(Name of person to whom	this subpoena is directed)
Production: YOU ARE COMMANDED to produce at documents, electronically stored information, or objects, and to material: See Schedule A	permit inspection, copying, testing, or sampling of the
Place: Wilmer Culter Pickering Hale and Dorr, LLP	Date and Time:
350 S Grand Ave #2100 Los Angeles, CA 90071	10/14/2019 9:00 am
☐ Inspection of Premises: YOU ARE COMMANDED to other property possessed or controlled by you at the time, date, a may inspect, measure, survey, photograph, test, or sample the property possessed or controlled by you at the time, date, a may inspect, measure, survey, photograph, test, or sample the property possessed or controlled by you at the time, date, a may inspect, measure, survey, photograph, test, or sample the property possessed or controlled by you at the time, date, a may inspect, measure, survey, photograph, test, or sample the property possessed or controlled by you at the time, date, a may inspect, measure, survey, photograph, test, or sample the property possessed or controlled by you at the time, date, a may inspect, measure, survey, photograph, test, or sample the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by you at the time, date, and the property possessed or controlled by the property possessed or	and location set forth below, so that the requesting party
The following provisions of Fed. R. Civ. P. 45 are attact Rule 45(d), relating to your protection as a person subject to a strespond to this subpoena and the potential consequences of not Date:10/03/2019	ubpoena; and Rule 45(e) and (g), relating to your duty to
CLERK OF COURT	
CLEAR OF COORT	OR
	/s/ Nora Q.E. Passamaneck
Signature of Clerk or Deputy Clerk	Attorney's signature
The name, address, e-mail address, and telephone number of the	· · · · · · · · · · · · · · · · · · ·
Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com	, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	·		
☐ I served the su	bpoena by delivering a copy to the nar	med person as follows:	
		on (date) ;	or
☐ I returned the	subpoena unexecuted because:		
tendered to the w		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under pe	enalty of perjury that this information i	s true.	
e:	_	Server's signature	
		Printed name and title	
		1 rmea name ana ime	
		Server's address	

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:
- (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- **(A)** *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Lalita Pandit Medical Group produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Lalita Pandit Medical Group, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who
 maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Lalita Pandit Medical Group covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

United States District Court

for the

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-	uici	$\mathbf{v}_{\mathbf{L}}$	′	awaiy

	District of	f Delaware			
Gen	entech, Inc.)			
	Plaintiff)			
	V.) Civ	il Action No.	18-924-CFC	
Ar	mgen Inc.)			
L	Defendant)			
S	UBPOENA TO TESTIFY AT A	DEPOSIT	ON IN A CI	VIL ACTION	
To:	Medical Specialists				
<u>-</u>	5700 Lake Worth Rd (Name of person to w				
	n this civil action. If you are an org designate other persons who consent chment:				
Place: Florida Legal S	upport	D	te and Time:		
5550 Glades Roca Raton, FL	oad, Suite 500			10/14/2019 9:00	am
The deposition	will be recorded by this method:	Videograph	er and stenog	grapher	
	ou, or your representatives, must als cored information, or objects, and m	_	•	-	_
Rule 45(d), relating to y	provisions of Fed. R. Civ. P. 45 are four protection as a person subject to a and the potential consequences of	o a subpoe	na; and Rule 4		-
Date: 10/03/2019					
	CLERK OF COURT				
			OR		
				/s/ Nora Q.E. Pa	ssamaneck
	Signature of Clerk or Deputy Cl	lerk		Attorney's sig	znature
The name, address, e-ma	ail address, and telephone number of	of the attorn	-	_	Genentech, Inc.
		(700)		es or requests thi	s suppoena, are:
	, nora.passamaneck@wilmerhale.c uite 2600, Denver. CO 80202	om, (720) 2	14-3135		

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

☐ I returned the subpoena Unless the subpoena was in	1.11			
Unless the subpoena was is tendered to the witness the	y delivering a copy to the na	med individual as follows:		
Unless the subpoena was intendered to the witness the		on (date)	; or	
tendered to the witness the	unexecuted because:			
·	ssued on behalf of the United fees for one day's attendance		_	
fees are \$	for travel and \$	for services, for a	a total of \$	0.00
I declare under penalty of	perjury that this information	is true.		
e:		Server's signatur	0	_
		server's signature	E	
		Printed name and ti	itle	

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

United States District Court

for the

District	of Del	laware

Genentech, Inc.)
Plaintiff)
v.	Civil Action No. 18-924-CFC
Amgen Inc.	
)
Defendant)
	MENTS, INFORMATION, OR OBJECTS OF PREMISES IN A CIVIL ACTION
	sts of the Palm Beaches, Inc. ld #204, Greenacres, FL 33463
(Name of person to	o whom this subpoena is directed)
documents, electronically stored information, or objects, material: See Schedule A	duce at the time, date, and place set forth below the following and to permit inspection, copying, testing, or sampling of the
Place: Florida Legal Support	Date and Time:
5550 Glades Road, Suite 500	10/14/2019 9:00 am
Boca Raton, FL 33431	10/14/2013 9.00 am
other property possessed or controlled by you at the time	DED to permit entry onto the designated premises, land, or , date, and location set forth below, so that the requesting party e the property or any designated object or operation on it. Date and Time:
Rule 45(d), relating to your protection as a person subjec respond to this subpoena and the potential consequences	re attached – Rule 45(c), relating to the place of compliance; t to a subpoena; and Rule 45(e) and (g), relating to your duty to of not doing so.
Date:10/03/2019	
CLERK OF COURT	OR
	/s/ Nora Q.E. Passamaneck
Signature of Clerk or Deputy	Clerk Attorney's signature
The name, address, e-mail address, and telephone numbe	r of the attorney representing (name of party) Genentech, Inc.
-, ,	, who issues or requests this subpoena, are:
Nora Q.E. Passamaneck, nora.passamaneck@wilmerha	le.com, (720) 274-3135

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	·		
☐ I served the su	bpoena by delivering a copy to the nar	med person as follows:	
		on (date) ;	or
☐ I returned the	subpoena unexecuted because:		
tendered to the w		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under pe	enalty of perjury that this information i	s true.	
e:	_	Server's signature	
		Printed name and title	
		1 rmea name ana ime	
		Server's address	

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- **(A)** *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Medical Specialists of the Palm Beaches, Inc. produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Medical Specialists of the Palm Beaches, Inc., its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Medical Specialists of the Palm Beaches, Inc. covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

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IJ	וואוי	пси	OI	Del	law	are

	District of D	elaware			
1	entech, Inc. Plaintiff V. One of the content of	Civil Action 1	No. 18-924-CFC		
	ngen Inc.)) efendant)				
SI	UBPOENA TO TESTIFY AT A DI	EPOSITION IN A	CIVIL ACTION		
To:	Osborn (1201 Bishop Rd, Ch (Name of person to who				
deposition to be taken in	lesignate other persons who consent t	ization, you must d	lesignate one or more officers, directors,		
Place: Byers & Anders 2208 North 30th Tacoma, WA 98	Street, Suite 202	Date and Tir	Date and Time: 10/14/2019 9:00 am		
The deposition v	vill be recorded by this method:	deographer and ste	enographer		
			he deposition the following documents, , copying, testing, or sampling of the		
Rule 45(d), relating to yo		a subpoena; and Ru	, relating to the place of compliance; le 45(e) and (g), relating to your duty to		
Date:10/03/2019	CLERK OF COURT				
		OR	/s/ Nora Q.E. Passamaneck		
	Signature of Clerk or Deputy Clerk	<u> </u>	Attorney's signature		
The name, address, e-ma	ail address, and telephone number of	· -	-		
	nora.passamaneck@wilmerhale.cor		issues or requests this subpoena, are:		

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this su	bpoena for (name of individual and title, if an	ıy)		
☐ I served the su	abpoena by delivering a copy to the nar	ned individual as follow	vs:	
		on (date)	; or	
☐ I returned the	subpoena unexecuted because:			
tendered to the w	ena was issued on behalf of the United itness the fees for one day's attendance		•	
fees are \$	for travel and \$	for services, fo	or a total of \$	0.00
I declare under po	enalty of perjury that this information i	s true.		
e:		Server's signa	tture	
		Printed name an	nd title	
		Server's addr		

Additional information regarding attempted service, etc.:

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

United States District Court

for the

District	of I	Dela	war
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	District of Delaware
Genentech, Inc. Plaintiff v. Amgen Inc.))) Civil Action No. 18-924-CFC)
Defendant	
	E DOCUMENTS, INFORMATION, OR OBJECTS CTION OF PREMISES IN A CIVIL ACTION
To:	Osborn Cancer Care
	ishop Rd, Chehalis, WA 98532-8711 of person to whom this subpoena is directed)
	D to produce at the time, date, and place set forth below the following
documents, electronically stored information, or material: See Schedule A	objects, and to permit inspection, copying, testing, or sampling of the
Place: Byers & Anderson Court Reporters	Date and Time:
2208 North 30th Street, Suite 202 Tacoma, WA 98403	10/14/2019 9:00 am
other property possessed or controlled by you at	MMANDED to permit entry onto the designated premises, land, or the time, date, and location set forth below, so that the requesting party or sample the property or any designated object or operation on it. Date and Time:
9	. P. 45 are attached – Rule 45(c), relating to the place of compliance; on subject to a subpoena; and Rule 45(e) and (g), relating to your duty to quences of not doing so.
CLERK OF COURT	
	OR
- CCL 1	/s/ Nora Q.E. Passamaneck
Signature of Clerk	or Deputy Clerk Attorney's signature
The name, address, e-mail address, and telephon	e number of the attorney representing (name of party) Genentech, Inc.
•	, who issues or requests this subpoena, are:
Nora Q.E. Passamaneck, nora.passamaneck@v	wilmerhale.com, (720) 274-3135

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	·		
☐ I served the su	bpoena by delivering a copy to the na	med person as follows:	
		on (date)	or
☐ I returned the	subpoena unexecuted because:		
tendered to the w		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under po	enalty of perjury that this information	is true.	
»:		Server's signature	
		server s signature	
		Printed name and title	
		Server's address	

Additional information regarding attempted service, etc.:

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Osborn Cancer Care produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Osborn

 Cancer Care, its corporate parents, corporate predecessors, corporate successors, and all past or
 present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- the name, title, and company affiliation of the Person or Persons who
 maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Osborn Cancer Care covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

United States District Court

for the

Distric	ct of Delaw	are		
Genentech, Inc. Plaintiff V. Amgen Inc. Defendant)	Civil Action No.	18-924-CFC	
SUBPOENA TO TESTIFY AT	A DEPOS	SITION IN A CIV	VIL ACTION	
15799 Profession	nal Plaza,	ncer Center Hammond, LA 704 s subpoena is directed,		
Testimony: YOU ARE COMMANDED to ap deposition to be taken in this civil action. If you are an or managing agents, or designate other persons who con those set forth in an attachment: See Schedule B.	organizati	on, you must desig	gnate one or more	officers, directors,
Place: Baton Rouge Court Reporters 12016 Justice Avenue		Date and Time:	10/14/2019 9:00 a	m
Baton Rouge LA 70816 The deposition will be recorded by this method	l: Videog	rapher and stenog	rapher	
☐ Production: You, or your representatives, must electronically stored information, or objects, and material:				
The following provisions of Fed. R. Civ. P. 45 Rule 45(d), relating to your protection as a person subjection to this subpoena and the potential consequence	ect to a sub	poena; and Rule 4		
Date:10/03/2019				
		OR	/s/ Nora Q.E. Pas	samanack
Signature of Clerk or Depu	ty Clerk		Attorney's sign	
The name, address, e-mail address, and telephone numb	per of the a	• •	ng (name of party) _es or requests this	Genentech, Inc. subpoena, are:
Nora Q.E. Passamaneck, nora.passamaneck@wilmerha 1225 Seventeenth St., Suite 2600, Denver, CO 80202	ale.com, (72	20) 274-3135		

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this su	bpoena for (name of individual and title, if an	ıy)		
☐ I served the su	abpoena by delivering a copy to the nar	ned individual as follow	/S:	
		on (date)	; or	
☐ I returned the	subpoena unexecuted because:			
tendered to the w	ena was issued on behalf of the United itness the fees for one day's attendance		•	
fees are \$	for travel and \$	for services, fo	or a total of \$	0.00
I declare under po	enalty of perjury that this information i	s true.		
e:		Server's signa	ture	
		Printed name an	ed title	
		Server's addr	ess	

Additional information regarding attempted service, etc.:

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

United States District Court

for the

District of Delaware

Genentech, Inc.	
Plaintiff)	
v.	Civil Action No. 18-924-CFC
Amgen Inc.	
Defendant)	
SUBPOENA TO PRODUCE DOCUMEN OR TO PERMIT INSPECTION OF I	
10.	Cancer Center za, Hammond, LA 70403
(Name of person to whom	n this subpoena is directed)
Production: YOU ARE COMMANDED to produce documents, electronically stored information, or objects, and to material: See Schedule A	o permit inspection, copying, testing, or sampling of the
Place: Baton Rouge Court Reporters	Date and Time:
12016 Justice Avenue Baton Rouge LA 70816	10/14/2019 9:00 am
Inspection of Premises: YOU ARE COMMANDED other property possessed or controlled by you at the time, date may inspect, measure, survey, photograph, test, or sample the Place:	e, and location set forth below, so that the requesting party
The following provisions of Fed. R. Civ. P. 45 are atta Rule 45(d), relating to your protection as a person subject to a respond to this subpoena and the potential consequences of no Date:10/03/2019	
CLERK OF COURT	
CLERK OF COURT	OR
	/s/ Nora Q.E. Passamaneck
Signature of Clerk or Deputy Clerk	Attorney's signature
The name, address, e-mail address, and telephone number of the	<u> </u>
Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com	, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	·		
☐ I served the su	bpoena by delivering a copy to the na	med person as follows:	
		on (date)	or
☐ I returned the	subpoena unexecuted because:		
tendered to the w		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under po	enalty of perjury that this information	is true.	
»:		Server's signature	
		server s signature	
		Printed name and title	
		Server's address	

Additional information regarding attempted service, etc.:

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:
- (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Pontchartrain Cancer Center produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Pontchartrain Cancer Center, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Pontchartrain Cancer Center covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

	Distri	ct of Delaw	are		
An	entech, Inc. Plaintiff V. ngen Inc. efendant	-))) -)	Civil Action No.	18-924-CFC	
St	UBPOENA TO TESTIFY AT	Γ A DEPO	SITION IN A CIV	VIL ACTION	
To:	2475 E. Broa (Name of perso	n to whom thi	Helena, MT 59601 s subpoena is directed		
deposition to be taken in	U ARE COMMANDED to ap this civil action. If you are an designate other persons who co chment:	n organizati	on, you must desig	nate one or more	officers, directors,
Place: Red Rhino Repo			Date and Time:	10/14/2019 9:00 a	am
Bozeman, MT 5	9715			10/14/2013 3:00 8	2111
The deposition v	will be recorded by this method	d: Videog	rapher and stenog	rapher	
electronically stomaterial: The following p Rule 45(d), relating to ye	u, or your representatives, must ored information, or objects, as rovisions of Fed. R. Civ. P. 45 our protection as a person subjut and the potential consequence	nd must per are attache ect to a sub	rmit inspection, cop ed – Rule 45(c), rel poena; and Rule 4	oying, testing, or	sampling of the of compliance;
	•				
Date:10/03/2019	CLERK OF COURT				
			OR		
	Signature of Clerk or Dept	uty Clerk		/s/ Nora Q.E. Pas Attorney's sig	
The name, address, e-ma	il address, and telephone num	ber of the a	• •		Genentech, Inc.
Nora Q.E. Passamaneck,	nil address, and telephone num nora.passamaneck@wilmerhaite 2600, Denver, CO 80202		, who issue	•	-

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this su	bpoena for (name of individual and title, if an	ıy)		
☐ I served the su	abpoena by delivering a copy to the nar	ned individual as follow	/S:	
		on (date)	; or	
☐ I returned the	subpoena unexecuted because:			
tendered to the w	ena was issued on behalf of the United itness the fees for one day's attendance		•	
fees are \$	for travel and \$	for services, fo	or a total of \$	0.00
I declare under po	enalty of perjury that this information i	s true.		
e:		Server's signa	ture	
		Printed name an	ed title	
		Server's addr	ess	

Additional information regarding attempted service, etc.:

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

United States District Court

for the

District of Delay	vare
Genentech, Inc.	Civil Action No. 18-924-CFC
SUBPOENA TO PRODUCE DOCUMENTS OR TO PERMIT INSPECTION OF PRI	
To: Saint Peter's 2475 E. Broadway St., (Name of person to whom the	Helena, MT 59601 is subpoena is directed)
Production: YOU ARE COMMANDED to produce at t documents, electronically stored information, or objects, and to produce at the documents of the stored information or objects, and to produce at the documents of the stored information or objects of the stored information or objects.	ne time, date, and place set forth below the following ermit inspection, copying, testing, or sampling of the
Place: Red Rhino Reporting	Date and Time:
510 W. Hemlock Bozeman, MT 59715	10/14/2019 9:00 am
☐ Inspection of Premises: YOU ARE COMMANDED to pother property possessed or controlled by you at the time, date, ar may inspect, measure, survey, photograph, test, or sample the proplace:	nd location set forth below, so that the requesting party
The following provisions of Fed. R. Civ. P. 45 are attached Rule 45(d), relating to your protection as a person subject to a subgrespond to this subpoena and the potential consequences of not do Date:10/03/2019	opoena; and Rule 45(e) and (g), relating to your duty to
CLERK OF COURT	
	OR
Signature of Clerk or Deputy Clerk	/s/ Nora Q.E. Passamaneck Attorney's signature
The name, address, e-mail address, and telephone number of the a	
	, who issues or requests this subpoena, are:
Nora Q F. Passamaneck, nora passamaneck@wilmerhale.com. (720) 274-3135

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	·		
☐ I served the su	bpoena by delivering a copy to the na	med person as follows:	
		on (date)	or
☐ I returned the	subpoena unexecuted because:		
tendered to the w		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under po	enalty of perjury that this information	is true.	
»:		Server's signature	
		server s signature	
		Printed name and title	
		Server's address	

Additional information regarding attempted service, etc.:

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- **(A)** *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Saint Peter's Health produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Saint Peter's Health, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- the name, title, and company affiliation of the Person or Persons who
 maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Saint Peter's Health covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

United States District Court

for the

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1)14	stria	et ot	: L)e	laware

	District	t of Delaw	are		
Ar	entech, Inc. Plaintiff V. mgen Inc. Defendant))))	Civil Action No.	18-924-CFC	
	UBPOENA TO TESTIFY AT	A DEDO	SITION IN A CIV	JII ACTION	
	UDFUENA IU IESIIFI AI	A DEFO	SITION IN A CIV	IL ACTION	
To:	468 Parish	Dr. #4, W	ology Associates, P ayne, NJ 07470 Is subpoena is directed		
deposition to be taken in	PU ARE COMMANDED to appoint this civil action. If you are an elesignate other persons who conchment:	organizati	on, you must desig	nate one or more	officers, directors,
	Pickering Hale & Dorr LLP		Date and Time:		
250 Greenwich New York, NY 1				10/14/2019 9:00 a	ım
The deposition v	will be recorded by this method:	Videog	rapher and stenog	rapher	
	ou, or your representatives, must ored information, or objects, and		-	•	_
Rule 45(d), relating to y	orovisions of Fed. R. Civ. P. 45 a our protection as a person subject a and the potential consequences	ct to a sub	poena; and Rule 4		
Date:10/03/2019	CLERK OF COURT				
			OR	/s/ Nora Q.E. Pas	samanock
	Signature of Clerk or Deput	y Clerk		Attorney's sign	
The name, address, e-ma	ail address, and telephone numb		• •	g (name of party)	Genentech, Inc.
 lora Q.E. Passamaneck.	, nora.passamaneck@wilmerhal	e.com, (7)		es or requests this	suopoena, are:
	uite 2600 Denver CO 80202	, (,		

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this su	bpoena for (name of individual and title, if an	ıy)		
☐ I served the su	abpoena by delivering a copy to the nar	ned individual as follow	/S:	
		on (date)	; or	
☐ I returned the	subpoena unexecuted because:			
tendered to the w	ena was issued on behalf of the United itness the fees for one day's attendance	*	•	
fees are \$	for travel and \$	for services, fo	or a total of \$	0.00
I declare under po	enalty of perjury that this information i	s true.		
e:		Server's signa	ture	
		Printed name an	ed title	
		Server's addr	ess	

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- (C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

United States District Court

for the

District	of:	Del	laware

Genentech, Inc.)
Plaintiff)
V.	Civil Action No. 18-924-CFC
Amgen Inc.	
Defendant)
	MENTS, INFORMATION, OR OBJECTS OF PREMISES IN A CIVIL ACTION
	gy Oncology Associates, PC br. #4, Wayne, NJ 07470
(Name of person to	o whom this subpoena is directed)
documents, electronically stored information, or objects, material: See Schedule A	duce at the time, date, and place set forth below the following and to permit inspection, copying, testing, or sampling of the
Place: Wilmer Cutler Pickering Hale & Dorr LLP	Date and Time:
250 Greenwich St 45th Floor New York, NY 10007	10/14/2019 9:00 am
	DED to permit entry onto the designated premises, land, or date, and location set forth below, so that the requesting party the property or any designated object or operation on it. Date and Time:
U 1	e attached – Rule 45(c), relating to the place of compliance; to a subpoena; and Rule 45(e) and (g), relating to your duty to of not doing so.
Date.	
CLERK OF COURT	O.P.
	OR /s/ Nora Q.E. Passamaneck
Signature of Clerk or Deputy	
Signature of Cierk of Deputy	2007 To Signature
The name, address, e-mail address, and telephone number	r of the attorney representing (name of party) Genentech, Inc. , who issues or requests this subpoena, are:
Nora Q F. Passamaneck nora passamaneck@wilmerha	<u> </u>

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	·		
☐ I served the su	bpoena by delivering a copy to the na	med person as follows:	
		on (date)	or
☐ I returned the	subpoena unexecuted because:		
tendered to the w		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under po	enalty of perjury that this information	is true.	
»:		Server's signature	
		server s signature	
		Printed name and title	
		Server's address	

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- (A) *Documents*. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Wayne Hematology Oncology Associates, PC produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Wayne Hematology Oncology Associates, PC, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Wayne Hematology Oncology Associates, PC covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

	Distric	ct of Delaw	are		
An	entech, Inc. Plaintiff V. ngen Inc. efendant)	Civil Action No.	18-924-CFC	
SI	UBPOENA TO TESTIFY AT	A DEPOS	SITION IN A CIV	IL ACTION	
To:	12500 Willowbrod	ok Road, Ci	lealth System umberland, MD 21 s subpoena is directed,		
deposition to be taken in	U ARE COMMANDED to ap this civil action. If you are an esignate other persons who con chment:	organizatio	on, you must desig	nate one or more	officers, directors,
Place: Regus Business 5100 Buckeysto Frederick, MD 2	wn Pike, Suite 250		Date and Time:	0/14/2019 9:00 a	am
The deposition v	vill be recorded by this method	l: Videogi	rapher and stenog	rapher	
electronically stomaterial:	u, or your representatives, must bred information, or objects, ar	nd must per	mit inspection, cop	oying, testing, or	sampling of the
Rule 45(d), relating to ye	rovisions of Fed. R. Civ. P. 45 our protection as a person subject and the potential consequence	ect to a subj	poena; and Rule 4:		
Date:10/03/2019	CLERK OF COURT		OR		
				/s/ Nora Q.E. Pas	samaneck
	Signature of Clerk or Depu	ty Clerk		Attorney's sig	nature
The name, address, e-ma	il address, and telephone numb	per of the at	• •	g (name of party) es or requests this	Genentech, Inc.
	nora.passamaneck@wilmerhaite 2600, Denver, CO 80202	ale.com, (72	20) 274-3135		

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

☐ I returned the subpoena Unless the subpoena was in				
Unless the subpoena was it tendered to the witness the	by delivering a copy to the na	med individual as follows:		
Unless the subpoena was itendered to the witness the		on (date)	; or	
tendered to the witness the	unexecuted because:			
	ssued on behalf of the United te fees for one day's attendance		_	
fees are \$	for travel and \$	for services, for a	a total of \$	0.00
I declare under penalty of	perjury that this information	is true.		
e:		Server's signature	2	
		server s signature		
		Printed name and ti	itle	

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - **(B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

United States District Court

for the

District	of Delaware

Genentech, Inc.)
Plaintiff V. Amgen Inc.)) Civil Action No. 18-924-CFC
Defendant	
	DOCUMENTS, INFORMATION, OR OBJECTS CTION OF PREMISES IN A CIVIL ACTION
	estern Maryland Health System owbrook Road, Cumberland, MD 21502
(Name of	f person to whom this subpoena is directed)
documents, electronically stored information, or of material: See Schedule A	D to produce at the time, date, and place set forth below the following objects, and to permit inspection, copying, testing, or sampling of the
Place: D D Contain	Date and Time:
Place: Regus Business Centers 5100 Buckeystown Pike, Suite 250 Frederick, MD 21704	10/14/2019 9:00 am
other property possessed or controlled by you at t	MMANDED to permit entry onto the designated premises, land, or the time, date, and location set forth below, so that the requesting party or sample the property or any designated object or operation on it.
Place:	Date and Time:
<u> </u>	P. 45 are attached – Rule 45(c), relating to the place of compliance; in subject to a subpoena; and Rule 45(e) and (g), relating to your duty to quences of not doing so.
CLERK OF COURT	
CLERK OF COURT	OR
	/s/ Nora Q.E. Passamaneck
Signature of Clerk o	or Deputy Clerk Attorney's signature
The name, address, e-mail address, and telephone	e number of the attorney representing (name of party) Genentech, Inc. , who issues or requests this subpoena, are:
Nora Q.E. Passamaneck, nora.passamaneck@w	

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	·		
☐ I served the su	bpoena by delivering a copy to the na	med person as follows:	
		on (date)	or
☐ I returned the	subpoena unexecuted because:		
tendered to the w		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under po	enalty of perjury that this information	is true.	
»:		Server's signature	
		server s signature	
		Printed name and title	
		Server's address	

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

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- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
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- (ii) is commanded to attend a trial and would not incur substantial expense.

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- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- **(C)** Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- **(A)** *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Western Maryland Health System produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

- 1. "You," "your," and "yours" shall refer to, collectively or singly, to Western Maryland Health System, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
 - 2. "Plaintiff" or "our" shall refer to Genentech.
- 3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to
 Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all
 past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals,
 agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting
 or purporting to act on its behalf.
 - 4. "Genentech" shall refer to Genentech, Inc.
- 5. "Person" means any natural person or any business, legal, or governmental entity or association.

- 6. "Kanjinti" refers to the commercial name for Amgen's trastuzumab biosimilar product.
- 7. "Document" means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.
 - 8. "Including" means including but not limited to.
- 9. "Produce" means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.
- 10. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.
- 11. "Thing" shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.
 - 12. The terms "all," "each," and "any" shall be construed as all and any.
- 13. The use of the singular form of any word shall include the plural form and vice versa.

- 14. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
- 15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
- 17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
- 18. The "Litigation" refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

- 1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for
 withholding the Document or Thing, in a manner sufficient for Plaintiffs
 and the Court to determine the validity of your withholding.
- 2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

- 3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.
- 4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.
- 5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

- 6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.
- 7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.
- 8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.
- 9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.
- 10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
 - 11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.
- 12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

- 1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.
- 2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Western Maryland Health System covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.