



May 11, 2018

**VIA CM/ECF & HAND DELIVERY**

The Honorable Gregory M. Sleet  
United States District Judge  
District of Delaware  
844 N. King Street, Unit 19  
Wilmington, DE 19801

Daniel M. Silver  
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Re: Genentech, Inc., et al. v. Amgen Inc., C.A. Nos. 17-1407-GMS, 17-1471-GMS

Dear Judge Sleet:

Please find enclosed the [Proposed] Scheduling Order memorializing the Court's rulings at the Rule 16 Scheduling Conferences held on April 11 and May 7, 2018. The parties respectfully refer the Court to Paragraph 10 (and the corresponding rows of the appended chart of case deadlines) to resolve different proposals made by the parties.

We thank the Court for its consideration and are available at the Court's convenience should Your Honor have any questions or concerns.

Respectfully Submitted,

/s/ Daniel M. Silver

Daniel M. Silver (#4758)

cc: Counsel of record (via electronic mail)

BOSTON  
HARTFORD  
STAMFORD  
NEW YORK  
NEWARK  
EAST BRUNSWICK  
PHILADELPHIA  
WILMINGTON  
WASHINGTON, DC

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

GENENTECH, INC. and CITY OF HOPE,	)	
	)	
Plaintiffs,	)	C.A. No. 17-1407-GMS
	)	C.A. No. 17-1471-GMS
v.	)	
	)	
AMGEN INC.,	)	
	)	
Defendant.	)	
_____	)	

**[PROPOSED] SCHEDULING ORDER**

This \_\_\_\_\_ day of May 2018, the Court having conducted Rule 16 Scheduling Conferences pursuant to Local Rule 16.2(b) on April 11, 2018 and May 7, 2018 and having directed the parties to submit a form of Scheduling Order memorializing the Court’s rulings at the Rule 16 Scheduling Conferences, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before May 29, 2018.
  
2. **Narrowing of Asserted Patents and Claims.** Plaintiffs shall reduce the number of patents as to which they claim infringement in this litigation to no more than eight patents by August 31, 2018. Plaintiffs further shall identify no more than twenty claims for claim construction and trial by September 17, 2018.

After the August 31, 2018 deadline, Plaintiffs shall be permitted to select as many as two additional patents upon a showing of good cause.

3. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before February 1, 2019.

4. **Reliance Upon Advice of Counsel.** Defendant shall inform Plaintiffs whether it intends to rely upon advice of counsel as a defense to willful infringement no later than March 29, 2019. If Defendant elects to rely on advice of counsel as a defense to willful infringement, Defendant shall produce any such opinions on which Defendant intends to rely to Plaintiffs no later than April 5, 2019.

5. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on at February 21, 2019 at 9:30 a.m. The *Markman* hearing is scheduled for a total of six hours with each side having three hours. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues. On or before November 16, 2018, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. The Plaintiffs shall submit to the court, a Joint Appendix of Intrinsic Evidence (the “Joint Appendix”) containing all intrinsic evidence relied upon in the claim construction briefing. A sample table of contents of the Joint Appendix can be located on this court’s website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). The Joint Appendix shall be filed on the same day as the answering claim construction briefs. The parties shall file opening claim construction briefs on December 21, 2018, and answering claim construction briefs on January 25, 2019. Briefing will be presented pursuant to the court’s Local Rules.

6. **Discovery.** All fact discovery in this case shall be initiated so that it will be completed on or before July 24, 2019. Opening expert reports on issues on which a party bears

the burden of proof shall be served on or before August 8, 2019. Rebuttal expert reports shall be served on or before October 7, 2019. Reply expert reports limited to responses on objective indicia of nonobviousness shall be served on or before November 6, 2019. Expert Discovery in this case shall be initiated so that it will be completed on or before February 21, 2020.

a. **Discovery and Scheduling Matters:** Should counsel find they are unable to resolve a discovery<sup>1</sup> or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a Joint Letter Agenda, which is non-argumentative, not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). After the parties have had three (3) discovery teleconferences, they will be required to file a joint letter showing good cause why the court should permit a fourth discovery teleconference. Should the court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a TWO PAGE LETTER, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than TWO PAGES. The party seeking relief may then file a reply letter of no more than TWO PAGES within three (3) days from the date of service of the answering letter.

7. **Confidential Information and Papers filed under Seal.** Should counsel find it will be necessary to apply to the court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement

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<sup>1</sup> Unless the court otherwise orders, should counsel be unable to agree on the discovery of paper and electronic documents, the court's "Default Standard for Discovery, Including Discovery of Electronically Stored Information" ("ESI") shall govern. The parties are negotiating a Discovery and ESI Protocol.

on a proposed form of order and submit it to the court within ten (10) days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 6(a).

8. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to the United States Magistrate Judge for the purpose of exploring the possibility of a settlement. The parties shall wait to be contacted by the assigned United States Magistrate Judge.

9. **Summary Judgment Motions.** Defendant may file a summary judgment motion solely directed to the availability of damages for Plaintiffs' claims for infringement arising from Defendant's manufacturing activities and whether Plaintiffs are entitled to a jury trial. With respect to the availability of damages for Plaintiffs, this summary judgment motion will be limited to the availability of such damages claims (*e.g.*, whether Plaintiffs have satisfied the marking statute and whether Amgen's alleged manufacturing activities are protected under the safe harbor provisions of Section 271 of the Patent Act) and shall not address the quantum of damages. Any such motion for summary judgment shall be filed on or before March 8, 2019, any answering brief in opposition to such motion for summary judgment shall be filed on or before March 22, 2019, and any reply brief in support of such motion for summary judgment shall be filed on or before March 29, 2019.

10. **PLAINTIFFS' PROPOSAL:** Prior to filing any other summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court on March 6, 2020.

Answering letter briefs shall be no longer than five (5) pages and filed with the court on March 20, 2020. Reply letter briefs shall be no longer than three (3) pages and filed with the Court on March 27, 2020. If the Court determines that argument is necessary to assist in the resolution of any request to file summary judgment, it shall notify the parties of the date and time on which the Court will conduct a telephone conference to hear such argument. Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in this paragraph.

AMGEN'S PROPOSAL: Defendant may also file a summary judgment motion directed to liability issues such as patent non-infringement, invalidity, unenforceability and the like. Any such motion for summary judgment shall be filed on or before March 6, 2020, any answering brief in opposition to such motion for summary judgment shall be filed on or before March 20, 2020, and any reply brief in support of such motion for summary judgment shall be filed on or before March 27, 2020.

Briefing will be presented pursuant to the Court's Local Rules.

11. **Applications by Motion.** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall not deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

12. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to District of Delaware Local Rule 7.1.4.

13. **Pretrial Conference.** On June 29, 2020, beginning at 10:00 a.m., the Court will hold a Pretrial Conference in Chambers. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). On or before April 24, 2020, Plaintiffs' counsel shall forward to Defendant's counsel a draft of the Pretrial Order containing the information Plaintiffs propose to include in the draft. Defendant's counsel shall, in turn, provide to Plaintiffs' counsel any comments on the Plaintiffs' draft, as well as the information Defendant proposes to include in the proposed Pretrial Order by May 8, 2020. **Motions in limine**<sup>2</sup>: **NO MOTIONS IN LIMINE SHALL BE FILED**; instead, the parties shall be prepared to address their evidentiary issues at the Pretrial Conference and during trial (before and after the trial day). The parties shall file with the court the joint Proposed Final Pretrial Order in accordance with the terms and with the information required by the form of Final Pretrial Order, which can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov) on or before May 29, 2020.

14. **Trial.** This matter is scheduled for a fifteen-day jury trial beginning at 9:30 a.m. on July 13, 2020.

15. **Scheduling.** The parties shall contact chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel is on the line for purposes of selecting a new date.

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<sup>2</sup> The parties should simply list, in an Exhibit to be attached to the Pretrial Order, the issues under a heading such as "Plaintiff's [name of party] List of Evidentiary Issues It Intends To Raise."

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UNITED STATES DISTRICT JUDGE



**EXHIBIT A****PROPOSED DEADLINES**

<b>Event</b>	<b>Deadline</b>
Initial Disclosures	May 29, 2018
Plaintiffs narrow list of Asserted Patents to no more than eight patents	August 31, 2018
Plaintiffs identify no more than 20 claims for claim construction and trial	September 17, 2018
Exchange List of Terms to be Construed	October 12, 2018
Exchange List of Proposed Constructions	October 26, 2018
Deadline to Meet and Confer to Narrow Claim Construction Disputes	November 2, 2018
File Final Joint Claim Construction Chart	November 16, 2018
Simultaneous Opening Claim Construction Briefs	December 21, 2018
Substantial Completion of Document Production	January 11, 2019
Simultaneous Answering Claim Construction Briefs	January 25, 2019
Deadline to Amend Pleadings and Deadline to Join Additional Parties	February 1, 2019
<i>Markman</i> Claim Construction Hearing	February 21, 2019, 9:30 a.m.
Opening Summary Judgment Brief by Defendant Directed to the Availability of Damages for Plaintiffs' Claims for Infringement Arising From Defendant's Manufacturing Activities and Whether Plaintiffs Are Entitled to Jury Trial	March 8, 2019
Answering Summary Judgment Brief	March 22, 2019

Reply Summary Judgment Brief	March 29, 2019
Disclosure of Reliance on Advice of Counsel	March 29, 2019
If Defendant Intends to Rely on Advice of Counsel, Production of Any Such Opinions on Which Defendant Intends to Rely	April 5, 2019
Close of Fact Discovery	July 24, 2019
Opening Expert Reports on Issues on Which a Party Bears the Burden of Proof	August 8, 2019
Responsive expert reports, including Plaintiffs' reports relating to objective indicia of non-obviousness	October 7, 2019
Reply expert reports limited to responses on objective indicia of non-obviousness	November 6, 2019
Close of Expert Discovery	February 21, 2020
Plaintiffs Proposal: Opening Letter Brief Seeking Permission to File Summary Judgment Motion Directed to Liability Issues Amgen's Proposal: Amgen's Opening Brief Directed to Liability Issues	March 6, 2020
Plaintiffs Proposal: Answering Letter Brief Opposing Permission to File Summary Judgment Motion Directed to Liability Issues Amgen's Proposal: Plaintiffs' Answering Brief Directed to Liability Issues	March 20, 2020
Plaintiffs Proposal: Reply Letter Brief	March 27, 2020

Seeking Permission to File Summary Judgment Motion Directed to Liability Issues Amgen's Proposal: Amgen's Reply Brief Directed to Liability Issues	
Plaintiffs Provide Draft Joint Pretrial Order	April 24, 2020
Defendant Provides Response to Plaintiffs' Draft Joint Pretrial Order	May 8, 2020
Joint Proposed Pretrial Order	May 29, 2020
Pretrial Conference	June 29, 2020, 10:00 a.m.
Trial (15 days)	July 13, 2020, 9:30 a.m.