

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

GENENTECH, INC. and CITY OF HOPE,

Plaintiffs,

v.

AMGEN, INC.,

Defendant.

Case No. 18-924-GMS



PUBLIC VERSION FILED: July 25, 2018

**STIPULATION AND [PROPOSED] ORDER
TO DISMISS PATENTS AGAINST AMGEN, INC.**

IT IS HEREBY STIPULATED AND AGREED by the Parties, subject to the approval of the Court, that all claims that Amgen, Inc. (“Amgen”) has infringed or will infringe U.S. Patent Nos. 6,242,177, 6,489,447, 6,586,206, 6,870,034, 7,449,184, 7,501,122, 8,044,017, 8,314,225, 8,357,301, 8,460,895, 8,691,232, 8,710,196, 8,771,988, 9,047,438, 9,080,183, 9,428,766, 9,487,809, 9,493,744, and 9,868,760 (collectively, “the Dismissed Patents” and “Dismissed Patent” if referring to any of these patents individually) in connection with its drug ABP 980 (the subject of Amgen’s BLA [REDACTED]) are DISMISSED WITH PREJUDICE. This dismissal pertains only to Plaintiffs’ claim of infringement with respect to ABP 980 (the subject of Amgen’s BLA [REDACTED]) and does not extend to litigation involving any other product between the Parties.

This dismissal is made without prejudice to Genentech Inc. and City of Hope’s (collectively, “Plaintiffs”) ability, to be applied on a patent claim-by-patent claim basis, to assert a Dismissed Patent if (1) Amgen makes a change to its drug product, ABP 980 (the subject of Amgen’s BLA [REDACTED]), the proposed label for its drug product, or the manufacturing processes disclosed in Amgen’s BLA [REDACTED], and that change materially alters the infringement analysis

with respect to one or more patent claims of that Dismissed Patent; or (2) Plaintiffs subsequently discover information not previously provided which establishes that the factual information provided by Amgen pursuant to 42 U.S.C. §§ 262(l)(2) or factual representation made by Amgen in the statement provided according to 262(l)(3)(B) was materially inaccurate or incomplete when provided, and the newly-discovered factual information materially alters the infringement analysis with respect to one or more patent claims of that Dismissed Patent. In the event that Plaintiffs reassert a Dismissed Patent under either of those circumstances, the parties reserve their rights with respect to the application of the limitation on remedies provided in 35 U.S.C. § 271(e)(6)(B) with respect to that Dismissed Patent. Each Party is to bear its own costs, expenses, and attorneys' fees associated with this action with respect to the Dismissed Patents.

Dated: July 19, 2018

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/s/ Daniel M. Silver

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SO ORDERED this _____ day of _____, 2018.

United States District Judge