

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

GENENTECH, INC. and CITY OF HOPE, )  
 )  
 Plaintiffs and Counterclaim Defendants, )  
 )  
 v. )  
 )  
 PFIZER INC., )  
 )  
 Defendant and Counterclaim Plaintiff. )  
 \_\_\_\_\_ )

C.A. No. 17-1672-CFC

GENENTECH, INC., CITY OF HOPE, and )  
 HOFFMANN LA ROCHE INC., )  
 )  
 Plaintiffs and Counter Defendants, )  
 )  
 v. )  
 )  
 CELLTRION, INC., CELLTRION, )  
 HEALTHCARE CO., LTD., TEVA )  
 PHARMACEUTICALS USA, INC., and )  
 TEVA PHARMACEUTICALS )  
 INTERNATIONAL GMBH, )  
 )  
 Defendants and Counterclaim Plaintiffs. )  
 \_\_\_\_\_ )

C.A. No. 18-95-CFC

GENENTECH, INC. and CITY OF HOPE, )  
 )  
 Plaintiffs and Counterclaim Defendants, )  
 )  
 v. )  
 )  
 AMGEN, INC., )  
 )  
 Defendant and Counterclaim Plaintiff. )  
 \_\_\_\_\_ )

C.A. No. 18-924-CFC

GENENTECH, INC., CITY OF HOPE, and )  
HOFFMANN LA ROCHE INC., )

Plaintiffs and Counter Defendants, )

v. )

CELLTRION, INC., CELLTRION, )  
HEALTHCARE CO., LTD., TEVA )  
PHARMACEUTICALS USA, INC., and )  
TEVA PHARMACEUTICALS )  
INTERNATIONAL GMBH, )

Defendants and Counterclaim Plaintiffs. )

C.A. No. 18-1025-CFC

GENENTECH, INC. and CITY OF HOPE, )

Plaintiffs, )

v. )

SAMSUNG BIOEPIS CO., LTD, )

Defendant. )

C.A. No. 18-1363-CFC

**SCHEDULING ORDER**

This 31<sup>st</sup> day of October, 2018, the Court having conducted a scheduling conference pursuant to Local Rule 16.1(b), 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)(1) Initial Disclosures and E-Discovery Default Standard. All parties except those in *Genentech, Inc. et al. v. Samsung Bioepis Co., Ltd.*, C.A. No. 18-1363-CFC have exchanged Rule 26(a)(1) Initial Disclosures, and the parties in the *Samsung* action shall exchange them within 5 days of the date of this Order. If they have not already done so, the

parties in each of the above-captioned cases are to meet and confer on a Proposed Standard for Discovery of Electronically Stored Information (“Proposed ESI Order”). Such Proposed ESI Orders shall be filed no later than **November 16, 2018**.

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before **April 5, 2019**.

3. Discovery.

a. Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before **May 13, 2019**. The Plaintiffs and Defendant Groups<sup>1</sup> will provide final contentions no later than the close of fact discovery.

b. Document Production. Substantial completion of document production shall be completed on or before **January 14, 2019**.

c. Discovery Limits. The parties are conferring to discuss limits on coordinated discovery, including depositions and written discovery. The parties will report back to the court at a later date with a joint proposal for such discovery limits, or, to the extent the parties are unable to submit a joint proposal, competing proposals that conform to the Court’s procedures for disputes relating to discovery matters. The parties further agree and stipulate that depositions shall not proceed until either the parties reach agreement or an order from the Court issues regarding appropriate limitations for depositions.

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<sup>1</sup> “Defendant Group” shall be defined to include all parties sued by Plaintiffs in a single cause of action. The four Defendant Groups are: (1) Pfizer Inc.; (2) Celltrion, Inc., Celltrion Healthcare Co., Ltd., Teva Pharmaceuticals USA, Inc., and Teva Pharmaceuticals International GMBH; (3) Amgen, Inc.; and (4) Samsung Bioepis Co., Ltd.

4. Application to Court for Protective Order. A protective order has been entered in *Genentech, Inc. et al. v. Pfizer Inc.*, C.A. No. 17-1672-CFC. The parties in *Genentech, Inc. et al. v. Celltrion, Inc. et al.*, C.A. No. 18-95-CFC, *Genentech, Inc. et al. v. Amgen, Inc.*, C.A. No. 18-924-CFC, and *Genentech, Inc. et al. v. Samsung Bioepis Co., Ltd.*, C.A. No. 18-1363-CFC, will propose protective orders for the Court's entry within two weeks from the date of this Order, and such proposed orders will include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

5. Disputes Relating to Discovery Matters and Protective Orders. Should counsel find they are unable to resolve a dispute relating to a discovery matter or protective order, the parties shall contact the Court's Case Manager to schedule an in-person conference/argument. Unless otherwise ordered, by no later than 48 hours prior to the conference/argument, the party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and the party's position on those issues. The party shall submit as attachments to its letter (1) an averment of counsel that the parties made a reasonable effort to resolve the dispute and that such effort included oral communication that involved Delaware counsel for the parties, and (2) a draft order for the Court's signature which identifies with specificity the relief sought by the party. By no later than 24 hours prior to the conference/argument, any party opposing the application for relief may file a letter, not to exceed three pages, outlining that party's reasons for its opposition. Should any document(s) be filed under seal, a courtesy copy of the sealed

document(s) must be provided to the Court within one hour of e-filing the document(s). If a motion concerning a discovery matter or protective order is filed without leave of the Court, it will be denied without prejudice to the moving party's right to bring the dispute to the Court through the procedures set forth in this paragraph.

6. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and one copy of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

7. Courtesy Copies. The parties shall provide to the Court two courtesy copies of all briefs and one courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

8. Claim Construction Issue Identification. Subject to Plaintiffs' reservation of due process rights stated on the record at the October 16, 2018 status conference, on or before **November 7, 2018**, Plaintiffs shall narrow the number of patents and claims asserted in this litigation against each Defendant Group to ten (10) patents with a maximum of two (2) claims per patent. Of the ten (10) patents per Defendant Group, at least six (6) patents must be the same for all Defendant Groups, with no more than 30 claims in total from these six (6) patents identified across the Defendant Groups. Absent further Order of the Court on a motion by Plaintiffs based on constitutional due process notions, no other patents or claims will be asserted against any Defendant Group in this litigation beyond those identified on or before **November 7, 2018** in accordance with this Paragraph. For avoidance of doubt, nothing in this Paragraph shall preclude Plaintiffs from seeking leave to assert additional patents or claims based upon changed circumstances—such as, for example, material changes to a Defendant's product or

manufacturing process, or the issuance of a new patent. On or before **November 14, 2018**, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction. On or before **November 20, 2018**, the parties shall exchange their proposed claim constructions of those term(s)/phrase(s). The list of claim term(s)/phrase(s) and proposed constructions will not be filed with the Court. Subsequent to exchanging these lists, the parties will meet and confer no later than **November 28, 2018** to prepare a Joint Claim Construction Chart to be filed no later than **December 5, 2018**. The Joint Claim Construction Chart, in Word format, shall be e-mailed simultaneously with filing to [cfc\\_civil@ded.uscourts.gov](mailto:cfc_civil@ded.uscourts.gov). The text for the Joint Claim Construction Chart shall be 14-point and in a Times New Roman or similar typeface. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

9. Claim Construction Briefing. The Plaintiffs shall serve, but not file, its opening brief, not to exceed 5,500 words, on **January 11, 2019**. The Defendants shall serve, but not file, their answering brief, not to exceed 8,250 words for arguments common to all Defendants, with an additional 1,250 words per Defendant Group to make separate arguments, on **February 15, 2019**. The Plaintiffs shall serve, but not file, their reply brief, not to exceed 5,500 words plus 1,250 words for each Defendant Group that made separate arguments, on **March 6, 2019**. The Defendants shall serve, but not file, their sur-reply brief, not to exceed 2,750 words for arguments common to all Defendants, with an additional 500 words per Defendant Group to

make separate arguments, on **March 20, 2019**. The text for each brief shall be 14-point and in a Times New Roman or similar typeface. Each brief must include a certification by counsel that the brief complies with the type and number limitations set forth above. The person who prepares the certification may rely on the word count of the word-processing system used to prepare the brief.

No later than **March 22, 2019**, the parties shall file a Joint Claim Construction Brief. The parties shall copy and paste their untitled briefs into one brief, with their positions on each claim term in sequential order, in substantially the form below.

#### **JOINT CLAIM CONSTRUCTION BRIEF**

- I. Agreed-upon Constructions
- II. Disputed Constructions
  - A. [TERM 1]
    - 1. Plaintiffs' Opening Position
    - 2. Defendants' Answering Position
    - 3. Plaintiffs' Reply Position
    - 4. Defendants' Sur-Reply Position
  - B. [TERM 2]
    - 1. Plaintiffs' Opening Position
    - 2. Defendants' Answering Position
    - 3. Plaintiffs' Reply Position
    - 4. Defendants' Sur-Reply Position

Etc. The parties need not include any general summaries of the law relating to claim construction. If there are any materials that would be submitted in an appendix, the parties shall submit them in a Joint Appendix.

10. Hearing on Claim Construction. Beginning at **9:00 a.m.** on **April 24, 2019**, the Court will hear argument on claim construction. The Court has reserved a full day for such argument. Absent prior approval of the Court (which, if it is sought, must be done so by joint

letter submission no later than the date on which answering claim construction briefs are due to be served), the parties shall not present testimony at the argument.

11. Disclosure of Expert Testimony.

a. Expert Reports. For the party who has the initial burden of proof on the subject matter the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before **June 28, 2019**. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party, including Plaintiffs' positions regarding secondary considerations of non-obviousness, is due on or before **August 9, 2019**. Reply expert reports from Defendants, limited to contradicting or rebutting Plaintiffs' positions on secondary considerations of non-obviousness, are by **August 23, 2019**. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition. Depositions of experts shall be completed on or before **September 27, 2019**.

12. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

13. Pretrial Conference. On **November 14, 2019**, the Court will hold a Rule 16(e) final pretrial conference in Court with counsel beginning at ~~FIVE~~ <sup>9:00</sup> ~~a~~ <sub>m</sub>. The parties shall file a joint proposed final pretrial order in compliance with Local Rule 16.3(c) no later than 5:00 p.m. on the third business day before the date of the final pretrial conference. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d) for the preparation of the proposed joint final pretrial order.



14. Motions in Limine. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to three *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument, and the party making the *in limine* request may add a maximum of one additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three-page submission (and, if the moving party, a single one-page reply). No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

15. Compendium of Cases. A party may submit with any briefing two courtesy copies of a compendium of the selected authorities on which the party would like the Court to focus. The parties should not include in the compendium authorities for general principles or uncontested points of law (e.g., the standards for summary judgment or claim construction). An authority that is cited only once by a party generally should not be included in the compendium. An authority already provided to the Court by another party should not be included in the compendium.

16. Trial. These matters should be trial ready in anticipation of a nine (9)-day bench trial beginning at 9:30 a.m. on **December 9, 2019**, with the subsequent trial days beginning at 9:30 a.m. The issues and parties included in this trial will be determined at a future point in the pre-trial process. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

17. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

18. Prior Scheduling Order. The dates outlined above supersede those dates previously entered in the September 17, 2018 Scheduling Order.

19. Summary of Case Schedule.

#	Event	Proposed Date
1.	Deadline for initial disclosures in <i>Genentech, Inc. et al. v. Samsung Bioepis Co., Ltd.</i> , C.A. No. 18-1363-CFC	Five (5) days of the date of this Order
2.	Deadline to submit proposed protective orders to the Court	Two (2) weeks from the date of this Order
3.	Deadline for Plaintiffs to identify for each Defendant Group ten (10) patents, with a maximum of two (2) claims per patent	November 7, 2018
4.	Deadline for parties to submit Proposed ESI Orders to the Court	November 16, 2018
5.	Deadline for parties to exchange a list of those claim term(s)/phrase(s) that they believe need construction	November 14, 2018
6.	Deadline for the parties to exchange their proposed claim constructions of those term(s)/phrase(s)	November 20, 2018
7.	Deadline for parties to meet-and-confer on claim construction	November 28, 2018
8.	Deadline for parties to submit Joint Claim Construction Chart	December 5, 2018

#	Event	Proposed Date
9.	Deadline for Plaintiff to serve opening claim construction brief	January 11, 2019
10.	Deadline for substantial completion of document production	January 14, 2019
11.	Deadline for Defendants to serve answering claim construction brief	February 15, 2019
12.	Deadline for Plaintiff to serve reply claim construction brief	March 6, 2019
13.	Deadline for Defendants to serve sur-reply claim construction brief	March 20, 2019
14.	Deadline for parties to file a Joint Claim Construction Brief	March 22, 2019
15.	Deadline for joinder of other parties and amendment of pleadings	April 5, 2019
16.	Claim construction hearing (full day)	April 24, 2019 at 9:00 a.m.
17.	Fact-discovery cut-off	May 13, 2019
18.	Deadline to provide final contentions	May 13, 2019
19.	Deadline for disclosure of expert testimony for the party who has the initial burden of proof on the subject matter	June 28, 2019
20.	Deadline for disclosure to contradict or rebut expert evidence identified by another party, including Plaintiffs' positions regarding secondary	August 9, 2019

#	Event	Proposed Date
	considerations of non-obviousness	
21.	Deadline for Defendants' reply expert reports, limited to contradicting or rebutting Plaintiffs' positions on secondary considerations of non-obviousness	August 23, 2019
22.	Expert discovery cut-off	September 27, 2019
23.	Pretrial conference	November <u>14</u> , 2019 at <u>9<sup>00</sup></u> a.m.
24.	Trial (9 days)	December 9, 2019 at 9:30 a.m.

Respectfully submitted,

SO ORDERED, this 31<sup>st</sup> day of October.

*Coh F. Ay*

United States District Judge

Case 17-1672-CFC

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