

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

BAXALTA INCORPORATED and BAXALTA  
GMBH,

Plaintiffs,

v.

GENENTECH, INC. and CHUGAI  
PHARMACEUTICAL CO., LTD.,

Defendants.

C.A. No. 17-509-TBD

**STIPULATION AND FINAL JUDGMENT**

WHEREAS, Plaintiffs Baxalta Incorporated and Baxalta GmbH (collectively, “Plaintiffs” or “Baxalta”) brought this action against Genentech, Inc. (“Genentech”) and Chugai Pharmaceutical Co., Ltd. (“Chugai”) alleging infringement of certain claims of U.S. Patent No. 7,033,590 (“the ’590 patent”);

WHEREAS, on September 19, 2018, the Court entered an order dismissing Chugai from this action (D.I. 293), leaving Genentech as the sole remaining defendant;

WHEREAS, on December 3, 2018 the Court entered an Opinion and Order (D.I. 330) construing disputed terms in the asserted claims of the ’590 patent, including, among other terms, the terms “antibody” “antibody fragment”, “antibody derivative” and “increasing the procoagulant activity...”;

WHEREAS, Baxalta concedes that HEMLIBRA® (emicizumab-kxwh), the only accused product in this action, does not infringe the asserted claims of the ’590 patent under the Court’s

construction of “antibody”, “antibody fragment”, or “antibody derivative” and Baxalta disagrees with and reserves all rights as to the Court’s construction of “procoagulant activity”;

WHEREAS, in exchange for Baxalta’s agreement to stipulate to a judgment of non-infringement without waiver of the right to appeal from that judgment based on the Court’s claim construction Order, Genentech agrees to stipulate to the dismissal without prejudice of its counterclaims for a declaratory judgment of non-infringement and a declaratory judgment of invalidity (*see* D.I. 240) without waiver of any argument or defenses;

WHEREAS, the Court has issued a letter rogatory (D.I. 326) that has been submitted to the United States Department of State for the testimony of Dr. Randolph Kerschbaumer, one of the inventors on the ’590 patent; and

WHEREAS, in order to promote judicial efficiency and conserve litigation costs, the parties desire to extend the deadlines for Genentech to seek costs and attorneys’ fees until the end of any appellate proceedings;

IT IS STIPULATED and ORDERED THAT:

1. Final judgment is entered in favor of Genentech and against Baxalta on all claims asserted in the operative complaint (the Amended Complaint for Patent Infringement, D.I. 239);
2. Genentech’s counterclaims for a declaratory judgment of non-infringement and a declaratory judgment of invalidity are dismissed without prejudice;
3. The Clerk of the Court is directed to enter final judgment in accordance with this stipulation;
4. Nothing in this stipulation and judgment will affect Genentech’s ability to take the deposition of Dr. Randolph Kerschbaumer while any appeal from this judgment is pending if the

requirements of Fed. R. Civ. P. 27(b) are satisfied, and if Genentech moves under Fed. R. Civ. P. 27(b) to take that deposition during such an appeal, Baxalta will not oppose that motion;

5. The deadlines for submission of a bill of costs and any motions for fees, including any motion under 35 U.S.C. § 285, are extended until (a) 21 days after the Federal Circuit issues its mandate, if Baxalta appeals from this judgment, or (b) 21 days after Baxalta's deadline to file notice of appeal, if Baxalta does not appeal from this judgment, or (c) 21 days after Baxalta discontinues any appeal from this judgment; and

6. This stipulated final judgment is without prejudice to either party's rights to appeal.

Date: January 31, 2019

Respectfully submitted,

/s/ Amy M. Dudash

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*Attorneys for Defendant Genentech, Inc.*

SO ORDERED this 31st day of January, 2019.

  
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Honorable Timothy B. Dyk  
United States Circuit Judge, sitting by designation