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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GENENTECH, INC., et al.,)	
)	
Plaintiff(s),)	No. C08-4909 SI (BZ)
)	
v.)	FOURTH DISCOVERY ORDER
)	
SANOFI-AVENTIS DEUTSCHLAND)	
GMBH, et al.,)	
)	
Defendant(s).)	
_____)	

Having reviewed the authorities cited by the parties concerning the law regulating the taking of depositions in Germany, **IT IS HEREBY ORDERED** that the depositions of Dr. Menken, and the Rule 30(b)(6) deposition of Sanofi-Aventis Germany, occur on April 1, 2009, and April 2, 2009, respectively, in Frankfurt, at either the homes or places of business of the respective witnesses, where they have consented to be deposed.

The parties' uncertainties on how to proceed with the German depositions stem partly from the inconsistent guidance given by the State Department and the United States Diplomatic Mission to Germany on their respective web sites. U.S. Department of State, Bureau of Consular Affairs, Judicial Assistance Germany,

1 http://travel.state.gov/law/info/judicial/judicial_648.html

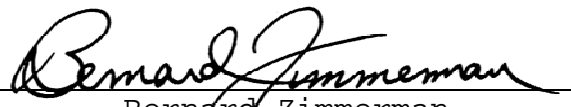
2 (last visited March 26, 2009); United States Diplomatic
3 Mission to Germany, U.S. Citizen Services in Germany,

4 <http://germany.usembassy.gov/acs/judicial-assistance.html>

5 (last visited March 26, 2009); see also In re Vitamin
6 Antitrust Litigation, No. Misc. 99-197, 2001 WL 35814436 at
7 *7-*8 (D.D.C. Sept. 11, 2001).

8 However, I have read the diplomatic notes exchanged
9 between Germany and the U.S. on this issue. See Exchange of
10 Notes Between the United States of America and the Federal
11 Republic of Germany, dated October 8, 1956 and February 1,
12 1980, T.I.A.S. No. 9938, 32 U.S.T. 4189, 1980 WL 309267.
13 Those exchanges establish that a witness who consents to be
14 deposed at the witness's home or place of business need not be
15 deposed at the Consulate.¹ Courts have recognized that the
16 Hague Convention is not necessarily the exclusive means of
17 obtaining discovery. See e.g., Laker Airways Ltd. v. Pan
18 American World Airways, 103 F.R.D. 42, 51 (D.D.C. 1984).

19 Dated: March 26, 2009

20 
21 Bernard Zimmerman
22 United States Magistrate Judge

22 G:\BZALL\--REFS\GENENTECH\FOURTH DISCOVERY ORDER RE DEPOSITIONS.FINAL.wpd

23
24 _____
25 ¹ Specifically, in one of the diplomatic exchanges,
26 Germany agrees to "visits by American investigating offers to
27 non-Americans for the purpose of questioning within the meaning
28 of the [previous agreement] at the latter's homes and places of
business, provided the persons to be questioned expressly
request questioning to be conducted at their homes or places of
business, or expressly consent to this form of questioning."
The Ministry of Foreign Affairs, Note Verbale, T.I.A.S. No.
9938, 32 U.S.T. 4181 (October 8, 1956).