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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Following a telephone conference with respect to Genentech's request to take discovery in order to prepare its opposition to Sanofi's motion for leave to amend (Docket No. 259), at which all parties were represented by counsel, the Court finds as follows:

1. Discovery with respect to Avastin and Xolair is relevant to the issues raised by Genentech's complaint for declaratory relief.
2. Such discovery is not needed to permit Genentech to oppose Sanofi's motion to amend its complaint and its infringement contentions. In my opinion, that motion should

1 be decided on grounds other than whether these two products
2 infringe Sanofi's patents.

3 3. Under Rule 16 and Rule 26(b)(2)(C), the timing of
4 such discovery should not interfere with the resolution of the
5 motion for leave to amend or the present schedule for serving
6 infringement and invalidity contentions and for claims
7 construction.

8 It is therefore **ORDERED** that Genentech's request to take
9 discovery with respect to Avastin and Xolair to assist it in
10 opposing Sanofi's motion for leave to amend its complaint and
11 its infringement contentions is **DENIED**, without prejudice.

12 It is further **ORDERED** that such discovery may be taken
13 after Judge Illston rules on Sanofi's motion, in the event the
14 motion is granted or in the event the motion is denied and
15 Genentech continues to seek a declaratory judgment that these
16 two products do not infringe Sanofi's patents.

17 Dated: February 3, 2010

18 

19 Bernard Zimmerman
20 United States Magistrate Judge

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