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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GENENTECH, INC., et al.,)
)
Plaintiff(s),)
)
v.)
)
SANOFI-AVENTIS DEUTSCHLAND)
GMBH, et al.,)
)
Defendant(s).)

No. C08-4909 SI (BZ)

SANOFI-AVENTIS DEUTSCHLAND)
GMBH, et al.,)

No. C09-4919 SI (BZ)

Plaintiff(s),)
)
v.)
)
GENENTECH and BIOGEN IDEC)
INC.,)
)
Defendants.)

TENTH DISCOVERY ORDER

With the concurrence of Judge Illston, **IT IS ORDERED** that Sanofi's motion to compel production for testing of a sample of the genomic material used to produce Avastin® is **GRANTED** on the following terms:

1. BioReliance is appointed, pursuant to Rule 53, as special master to test the genomic material for the presence

1 of the patented HCMV enhancer. Genentech shall provide a copy
2 of this Order to BioReliance immediately and request
3 BioReliance to notify the Court by November 15, 2010, if it
4 declines the appointment.

5 2. In this matter, BioReliance will act as a neutral
6 expert appointed by the Court. Sanofi and Genentech may each
7 suggest testing protocols to BioReliance but the testing
8 protocol it uses will be determined by BioReliance.

9 3. The Court expects BioReliance to develop the testing
10 protocol within **15 days** after agreeing to serve as special
11 master, to conduct the test as soon thereafter as possible and
12 to issue its report within **15 days** of conducting the test.
13 BioReliance shall submit its testing report directly to the
14 Court with a copy to Sanofi and Genentech.

15 4. Genentech will produce the amount of genomic material
16 BioReliance requires to conduct the test.

17 5. As stipulated by Sanofi in open court, if the test
18 fails to disclose the presence of the HCMV enhancer in the
19 tested material, Sanofi will dismiss its claims against
20 Avastin® with prejudice.

21 6. The cost of the testing will be borne by Sanofi. If
22 the test results disclose the presence of the HCMV enhancer,
23 and Sanofi ultimately prevails in the litigation, it may seek
24 to recover the cost under Rule 54(d).

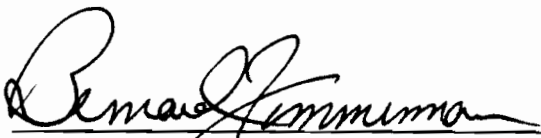
25 7. BioReliance's testing, testing protocol and report
26 shall be governed by the August 6, 2009 protective order,
27 which BioReliance shall sign.

28 8. The parties shall meet by **November 2, 2010**

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to prepare a proposed order of appointment under Rule 53(b),
which shall be submitted to the Court by **November 4, 2010**, and
to agree on any administrative or logistical matters necessary
to implement this Order.

Dated: October 28, 2010



Bernard Zimmerman
United States Magistrate Judge

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