

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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| GENENTECH, INC., |) | Case No.: 10-CV-02037-LHK |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER GRANTING IN PART AND |
| |) | DENYING IN PART MOTION TO |
| THE TRUSTEES OF THE UNIVERSITY OF |) | SHORTEN TIME ON GENENTECH'S |
| PENNSYLVANIA, a Pennsylvania non-profit |) | MOTION TO STRIKE; AND |
| corporation, |) | GRANTING IN PART MOTION TO |
| |) | SEAL |
| Defendant. |) | |
| | | (re: dkt. #s 537, 540, 549) |

On April 2, 2012, Genentech filed a Motion to Strike Certain Testimony and Exhibits in the University of Pennsylvania's ("U Penn") Opposition to Genentech's Motion for Summary Judgment ("MSJ"), Pursuant to Fed. R. Evid. 104, 402, 403, 602, and 702, and Fed. R. Civ. P. 26, 37, and 56. ECF No. 536 ("Motion to Strike").¹ The following day, Genentech filed a Motion to Shorten Time, seeking to expedite the briefing and hearing schedule on the Motion to Strike so that the Motion to Strike may be heard at the same time as the hearings on Genentech's MSJ and the University's Motion for Summary Adjudication ("MSA"), both set for April 19, 2012. See ECF No. 537 ("Motion to Shorten Time"). U Penn filed an Opposition to the Motion to Shorten Time on April 6, 2012, urging the Court not to consider Genentech's Motion to Strike, which violates the requirement under Civil Local Rule 7-3(c) that all evidentiary and procedural objections be

¹ Genentech filed a Corrected Motion to Strike on April 4, 2012. ECF No. 541.

1 contained within the reply brief, not to exceed 15 pages. *See* ECF No. 546; *see also* Civil L.R. 7-
2 3(c).

3 The parties' adherence to the Federal and Local Rules is critical not only to the Court's
4 docket management but also to ensuring fairness to one another. As U Penn correctly notes, the
5 Court does not take lightly violations of Civil L.R. 7-3(c) and ordinarily will not entertain untimely
6 filed evidentiary or procedural objections. Nonetheless, Genentech's Motion to Strike challenges
7 portions of U Penn's expert declarations, cited heavily in U Penn's Opposition to Genentech's
8 MSJ, as lacking adequate scientific support. Because Genentech's MSJ purports to be case
9 dispositive, the Court agrees with Genentech that it is important to consider these allegations
10 concurrently with Genentech's MSJ. Thus, the Court will allow limited briefing solely on
11 Genentech's *Daubert* motion, but not on its FRCP 26 motion. In light of the upcoming hearing
12 date and the voluminous amount of briefing and exhibits that have already been submitted in
13 connection with the MSJ and MSA, the Court sets the following briefing schedule and page limits
14 on Genentech's Motion to Strike: (1) U Penn's Opposition to the Motion to Strike, not to exceed 10
15 pages in length, is due Friday, April 13, 2012, at 5:00 p.m.; and (2) Genentech's Reply, not to
16 exceed 3 pages in length, is due Monday, April 16, 2012, at noon. The Parties' briefs shall address
17 only whether the challenged portions of U Penn's expert declarations are sufficiently supported by
18 scientific evidence in the record. The Parties may rely only on evidence already in the record and
19 may not introduce any new exhibits. The Parties shall be prepared to address any questions
20 regarding the Motion to Strike at the April 19, 2012 hearing on the MSJ and MSA, should oral
21 argument on the Motion to Strike be necessary.²

22 Genentech also filed a Motion to File Under Seal Portions of Its Motion to Strike. ECF No.
23 540 ("Motion to Seal"). Specifically, Genentech moves to file under seal: (1) excerpts from the
24 deposition transcript of Jeffrey A. Drebin, M.D., Ph.D. ("Drebin Deposition"), attached as Exhibit
25 A to the Declaration of Tashica T. Williams in Support of Genentech's Motion to Strike
26 ("Williams Decl."), *see* Williams Decl. ISO Mot. to Strike, ECF No. 536-1, Ex. A; and (2) the

27 ² In light of this Order, Genentech's Motion for Leave to File a Reply in Support of Its Motion to
28 Shorten Time, ECF No. 549, filed April 10, 2012, is DENIED as moot.

1 portions of the Motion to Strike that reference information from the Drebin Deposition, *see* Mot. to
2 Strike at 15 & n.15. These materials were designated by U Penn as “Highly Confidential –
3 Attorneys’ Eyes Only,” pursuant to the Protective Order in this action. Because Genentech does
4 not seek to seal any of its own documents, it has filed neither a supporting declaration nor a
5 narrowly tailored proposed sealing order.

6 Pursuant to Civil Local Rule 79-5(d), when a party moves to seal documents designated as
7 sealable by another party, the designating party must file a supporting declaration within 7 days, or
8 the sealing motion will be denied. Although U Penn failed to file a supporting declaration within 7
9 days, as required by the Local Rules, it filed the requisite declaration on April 10, 2012,
10 accompanied by a narrowly tailored proposed order. *See* ECF No. 547. Again, future
11 noncompliance with the Local Rules may result in the Court’s striking of untimely filed documents
12 *sua sponte*. Nonetheless, U Penn’s declaration requests only the sealing of portions of Genentech’s
13 Motion to Strike that reference confidential statements made by Dr. Jeffrey Drebin regarding
14 private compensation agreements between the inventors and U Penn, and does not request the
15 sealing of the rest of Exhibit A to the Williams Declaration. *Id.* Because U Penn seeks to seal
16 material in a non-dispositive motion, it need only show “good cause” rather than “compelling
17 reasons” for nondisclosure of the information. *See Kamakana v. City and Cnty. of Honolulu*, 447
18 F.3d 1172, 1180 (9th Cir. 2006). Here, U Penn has narrowly tailored its proposed redactions and
19 has shown good cause to seal the material requested. Accordingly, Genentech’s Motion to Seal is
20 GRANTED only as to the designated portions of Genentech’s Motion to Strike and pages 241:24-
21 242:3 of Exhibit A to the Williams Declaration, but DENIED as to the remainder of Exhibit A to
22 the Williams Declaration.

23 **IT IS SO ORDERED.**

24
25 Dated: April 11, 2012

26 
27 LUCY H. KOH
28 United States District Judge