

**Exhibit A****SUPPLEMENTAL PROPOSED JURY INSTRUCTIONS****PRODUCT-BY-PROCESS CLAIMS**

Sometimes a product may best be described by the process by which it is made, instead of by describing its structure or chemical characteristics. Such claims, which describe a product by describing the process by which it is made, are called “product-by-process” claims.<sup>1</sup> These claims are directed to specific products, any process steps you see in the claim are merely descriptive.<sup>2</sup> In other words, you could not patent a car just because you figured out a new process on how to put one together.

You may, however, consider the process steps in the claim if you believe that they make the product itself different.<sup>3</sup> This would happen, for example, if your new process in making a car gave the car the ability to fly. That process changed the underlying product.

The asserted claims of U.S. Patent No. 5,995,422 and 5,547,933 are product by process claims. As a result, the source or process limitations “purified from mammalian cells grown in culture” from the ‘422 patent and “non-naturally occurring,” from the ‘933 patent only make the claimed products patentable if they serve to distinguish the structure of the claimed product from the products contained in the prior art.

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<sup>1</sup> *Smithkline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1315 (Fed. Cir. 2006); *Scripps Clinic & Research Found. v. Genentech, Inc.*, 927 F.2d 1565, 1583 (Fed. Cir. 1991).

<sup>2</sup> *Smithkline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1315 (Fed. Cir. 2006); *General Electric Co. v. Wabash Appliance Corp.*, 304 U.S. 364, 373 (1938);

<sup>3</sup> *In re Luck*, 476 F.2d 650, 653 (C.C.P.A. 1973).