

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JOHN ALLCOCK (Bar No. 098895)
KATHRYN B. RILEY (Bar No. 211187)
ERICA J. PASCAL (Bar. No. 248677)
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297
Tel: 619.699.2800
Fax: 619.699.2701
john.allcock@dlapiper.com
kathryn.riley@dlapiper.com
erica.pascal@dlapiper.com

Attorneys for Plaintiffs
BIOGEN IDEC, INC and GENENTECH, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'10CV U 608 BEN WVG

BIOGEN IDEC, INC., and
GENENTECH, INC.

Plaintiffs,

v.

GLAXOSMITHKLINE LLC and
GLAXO GROUP LIMITED,

Defendants.

CASE NO.

**DECLARATORY RELIEF COMPLAINT
FOR PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

FILED

10 MAR 23 PM 4:16

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *MTB*

DEPUTY

CR

1 Plaintiffs Biogen Idec, Inc. ("Biogen") and Genentech, Inc. ("Genentech") (collectively
2 "Plaintiffs") for their Complaint against Glaxo Group Limited and GlaxoSmithKline LLC
3 (collectively "Defendants" and "GSK") allege as follows:

4 **NATURE OF THE CASE**

5 1. This is an action for declaratory judgment of patent infringement of United States
6 Patent No. 7,682,612. This action arises out of GSK's manufacture, use, sale, offer to sell and
7 importation of GSK's ofatumumab, GSK's anti-CD20 antibody product marketed as Arzerra™
8 for treatment of chronic lymphocytic leukemia.

9 **PARTIES**

10 2. Plaintiff Biogen Idec Inc. is a Delaware Corporation with its principal place of
11 business at 14 Cambridge Center, Cambridge, Massachusetts, 02142.

12 3. Plaintiff Genentech Inc. is a Delaware Corporation with its principal place of
13 business at 1 DNA Way, South San Francisco, California, 94080.

14 4. On information and belief, Defendant GlaxoSmithKline LLC is a Delaware limited
15 liability company having a principal place of business at One Franklin Plaza, Philadelphia,
16 Pennsylvania, 19102.

17 5. On information and belief, Defendant Glaxo Group Limited d/b/a
18 GlaxoSmithKline ("Glaxo Group Limited") is an English Corporation, having a principal place of
19 business at Glaxo Wellcome House, Berkeley Avenue, Greenford, Middlesex, UB6 0NN, United
20 Kingdom.

21 **JURISDICTION AND VENUE**

22 6. This is a civil action for declaratory judgment of patent infringement arising under
23 the patent laws of the United States 35 U.S.C. § 1 et seq. and the Declaratory Judgment Act
24 28 U.S.C. §§ 2201 and 2202. This Court has subject matter jurisdiction over this action pursuant
25 to 28 U.S.C. §§ 1331 and 1338(a).

26 7. On information and belief, Glaxo Group Limited is in the business of
27 manufacturing, marketing, importing and selling pharmaceutical drugs and biologic products,
28 including antibody products such as Arzerra™. On information and belief, Glaxo Group Limited

1 directly or indirectly, through its affiliates and agents including GlaxoSmithKline LLC,
2 manufactures, markets and sells pharmaceutical drugs and biologics products, including the
3 Arzerra™ product, throughout the United States and in this judicial district. Thus, Glaxo Group
4 Limited is subject to personal jurisdiction in this district because it regularly and continuously
5 conducts business, including business directly related to Arzerra™, within the state of California.

6 8. On information and belief, GlaxoSmithKline LLC directly, or indirectly,
7 manufactures, markets or sells pharmaceutical drug and biologic products, including antibody
8 products such as Arzerra™, throughout the United States and in this judicial district. On
9 information and belief, GlaxoSmithKline LLC purposefully has conducted and continues to
10 conduct business in this judicial district. Thus, GlaxoSmithKline LLC is subject to personal
11 jurisdiction in this district because it regularly and continuously conducts business, including
12 business directly related to Arzerra™, within the state of California.

13 9. A real, immediate and substantial dispute exists between the parties given GSK's
14 manufacture, sale, offering to sell, distributing and importing of Arzerra™ and the issuance of
15 U.S. Patent No. 7,682,612 which covers methods of treating chronic lymphocytic leukemia by
16 administering anti-CD20 antibodies such as Arzerra™.

17 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), (c) and (d).

18 **FACTUAL BACKGROUND**

19 11. On March 23, 2010 the United States Patent and Trademark Office duly and
20 legally issued U.S. Patent No. 7,682,612 ("the '612 patent") to Biogen Idec Inc., the assignee of
21 the named inventors Christine A. White and Antonio J. Grillo-Lopez and Genentech, Inc., the
22 assignee of the named inventors Susan Desmond-Hellmann and John G. Curd. A copy of the '612
23 patent is attached as Exhibit A.

24 12. On information and belief, on or about October 26, 2009, GSK received approval
25 from the United States Food & Drug Administration ("FDA") for the ofatumumab antibody
26 product, an anti-CD20 antibody, also known as Arzerra™ for the treatment of chronic
27 lymphocytic leukemia.

28 //

1 13. On information and belief, after receiving FDA approval for Arzerra™, GSK
2 began manufacturing, importing, offering to sell, selling and distributing Arzerra™ in the United
3 States.

4 14. On information and belief, GSK's Arzerra™ product as sold includes a label which
5 informs, encourages and promotes the use of this product for the treatment of chronic
6 lymphocytic leukemia.

7 15. On information and belief, members of the medical community, who encompass
8 but are not limited to, physicians, nurses, hospitals, medical clinics and medical facilities,
9 pharmacists, pharmacies and pharmacist wholesalers, treat patients for chronic lymphocytic
10 leukemia using Arzerra™ manufactured, sold and distributed by GSK.

11 16. Idec Pharmaceuticals was a San Diego, CA company. Idec Pharmaceuticals
12 merged with Biogen in 2003.

13 17. Biogen has a research and corporate campus in San Diego, California, for cancer
14 (oncology) research.

15 18. Inventors Christine A. White and Antonio J. Grillo-Lopez were employed by Idec
16 Pharmaceuticals in San Diego, CA when the '612 patent was filed with the United States Patent
17 and Trademark Office.

18 19. On information and belief, inventor Christine A. White is a resident of San Diego
19 County, CA.

20 20. On information and belief, inventor Antonio J. Grillo-Lopez is a resident of San
21 Diego County, CA.

22 21. Genentech has a manufacturing facility in Oceanside, San Diego County,
23 California, for the manufacture of biologic products.

24 22. Genentech and Biogen co-market throughout the United States, including in this
25 district, an anti-CD-20 antibody product known as Rituxan® for the treatment of chronic
26 lymphocytic leukemia and other diseases.

27 23. Activities related to the creation and development of Rituxan® occurred primarily
28 in San Diego, CA.

1 **FIRST CLAIM FOR RELIEF**
2 **(Declaratory Judgment as to Inducing Infringement of the '612 Patent)**

3 24. Plaintiffs repeat and reallege every allegation in paragraphs 1 through 23, as if
4 fully set forth herein.

5 25. GSK received notice of the '612 patent at least as of its issue date on March 23,
6 2010 and/or the filing of the instant Complaint.

7 26. Through the conduct alleged above, GSK knowingly and actively induces and will
8 induce members of the medical community, who encompass but are not limited to physicians,
9 nurses, hospitals, medical clinics and medical facilities, pharmacists, pharmacies and pharmacist
10 wholesalers for whom GSK manufactures and to whom GSK markets, offers to sell, sells and
11 distributes Arzerra™, to directly infringe one or more claims of the '612 patent by their treatment
12 of patients with Arzerra™ for chronic lymphocytic leukemia.

13 27. Plaintiffs are being and will be injured and damaged by GSK's knowing and active
14 inducement of members of the medical community to directly infringe the '612 patent.

15 **SECOND CLAIM FOR RELIEF**
16 **(Declaratory Judgment as to Contributory Infringement of the '612 Patent)**

17 28. Plaintiffs repeat and reallege every allegation in paragraphs 1 through 23, as if
18 fully set forth herein.

19 29. GSK received notice of the '612 patent at least as of its issue date on March 23,
20 2010 and/or the filing of the instant Complaint.

21 30. Through the sale, marketing and distribution of Arzerra™, GSK is contributing
22 and will contribute to the infringement of one or more claims of the '612 patent by the medical
23 community, who encompass but are not limited to physicians, nurses, hospitals, medical clinics
24 and medical facilities, pharmacists, pharmacies and pharmacist wholesalers for whom GSK
25 manufactures and to whom GSK markets, offers to sell, sells and distributes Arzerra™, through
26 the medical community's treatment of patients with GSK's Arzerra™ for chronic lymphocytic
27 leukemia. GSK manufactures, markets, offers to sell, sells and/or distributes Arzerra™ and will
28

1 continue to do so, knowing the same to be especially made or especially adapted for use in an
2 infringement of the '612 patent. Upon information and belief, Arzerra™ is not a staple article or
3 commodity of commerce suitable for substantial noninfringing use.

4 31. Plaintiffs are being and will be injured and damaged by GSK's contribution to the
5 infringement of the '612 patent by members of the medical community.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for relief as follows:

- 8 1. An order adjudging and decreeing that Defendant Glaxo Group Limited induces
9 and will induce the direct infringement of the '612 patent;
- 10 2. An order adjudging and decreeing that Defendant GlaxoSmithKline LLC induces
11 and will induce the direct infringement of the '612 patent;
- 12 3. An order adjudging and decreeing that Defendant Glaxo Group Limited
13 contributes to and will contribute to the direct infringement of the '612 patent;
- 14 4. An order adjudging and decreeing that Defendant GlaxoSmithKline LLC
15 contributes to and will contribute to the direct infringement of the '612 patent;
- 16 5. An order directing GSK to account for and pay to Plaintiffs all damages caused to
17 Plaintiffs by reason of GSK's patent infringement, pursuant to 35 U.S.C. § 284, including
18 increased damages under 35 U.S.C. § 284;
- 19 6. An award of pre-judgment and post-judgment interest on the damages caused to
20 Plaintiffs by GSK;
- 21 7. A declaration that this case is exceptional and an award of attorneys' fees under
22 35 U.S.C. § 285 and costs and expenses in this action; and

23 ////
24 ////
25 ////
26 ////
27 ////
28 ////

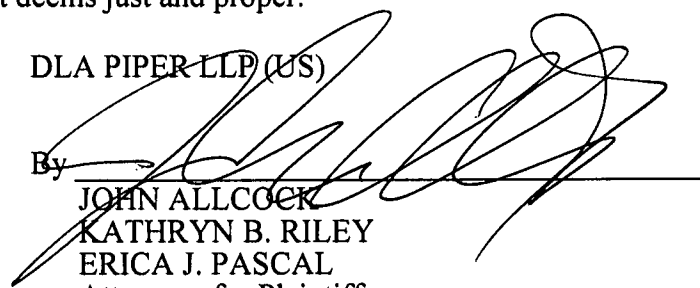
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. For all other relief the Court deems just and proper.

Dated: March 23, 2010

DLA PIPER LLP (US)

By



JOHN ALLCOCK
KATHRYN B. RILEY
ERICA J. PASCAL
Attorneys for Plaintiffs
BIOGEN IDEC, INC. and GENENTECH, INC.

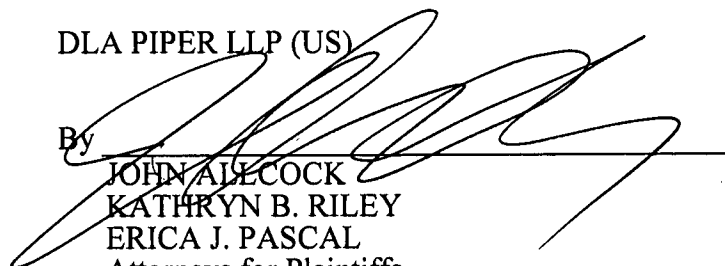
DEMAND FOR JURY TRIAL

Plaintiffs Biogen Idec, Inc. and Genentech, Inc. hereby demand a jury trial.

Dated: March 23, 2010

DLA PIPER LLP (US)

By



JOHN ALLCOCK
KATHRYN B. RILEY
ERICA J. PASCAL
Attorneys for Plaintiffs
BIOGEN IDEC, INC. and GENENTECH, INC.