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FILED

SEP 20 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ORIGINAL

GENENTECH, INC.,

Case No.

Plaintiffs,

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NONINFRINGEMENT OF
U.S. PATENT NOS. RE40,070 AND RE41,555**

v.

DEMAND FOR JURY TRIAL

GLAXOSMITHKLINE LLC,

CV 10 4255

Defendant.

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NATURE OF THE ACTION

1. This is an action for a declaratory judgment of patent non-infringement and invalidity of United States Patent Nos. RE40,070 (“the ’070 patent”) and RE41,555 (“the ’555 patent”) arising under the patent laws of the United States, Title 35 of the United States Code. The ’070 Patent is attached hereto as Exhibit A. The ’555 Patent is attached hereto as Exhibit B.

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THE PARTIES

2. Plaintiff Genentech, Inc. is a Delaware corporation with a principal place of business at One DNA Way, South San Francisco, California 94080.

3. Defendant Glaxosmithkline LLC is a Delaware limited liability company with its address at One Franklin Plaza, Philadelphia, Pennsylvania, 19102.

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JURISDICTIONAL STATEMENT

4. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., and under the patent laws of the United States, 35 U.S.C. § 1, et seq.

5. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201(a) and 2202.

6. This Court has personal jurisdiction over defendant GlaxoSmithKline LLC (“GlaxoSmithKline”) by virtue of their sufficient minimum contacts with this forum as a result of business they conduct in the State of California and within the Northern District of California.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c).

8. An immediate, real, and justiciable controversy exists between Genentech and GlaxoSmithKline as to whether the ’070 patent and the ’555 patent are valid or are infringed by Plaintiffs’ making and/or having made therapeutic antibody products.

9. On information and belief, Paul Shadle, a named inventor on the ’070 patent and on the ’555 patent, resides within this District.

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INTRADISTRICT ASSIGNMENT

10. For purposes of intradistrict assignment pursuant to Civil Local Rules 3-2(c) and 3-5(b), this Intellectual Property Action is to be assigned on a district-wide basis.

FIRST COUNT

(Declaration of Non-infringement of the '070 Patent)

11. Genentech restates and incorporate by reference each of the allegations of the foregoing paragraphs of this Complaint.

12. GlaxoSmithKline claims to be the owner and assignee of all rights, title and interest in and under the '070 Patent.

13. There is a substantial created a substantial, immediate and real controversy between the parties as to the non- infringement of the '070 patent.

14. Genentech and the customers using its products or services are not infringing and have not infringed any valid claim of the '070 Patent, and GlaxoSmithKline is entitled to no relief for any claim arising under or relating to alleged rights in the '070 patent.

SECOND COUNT

(Declaration of Non-infringement of the '555 Patent)

15. Genentech restates and incorporate by reference each of the allegations of the foregoing paragraphs of this Complaint.

16. Glaxosmithkline claims to be the owner and assignee of all rights, title and interest in and under the '555 Patent.

17. There is a substantial, immediate and real controversy between the parties as to the non- infringement of the '555 patent.

18. Genentech and the customers using its products or services are not infringing and have not infringed any valid claim of the '555 Patent, and GlaxoSmithKline is entitled to no relief for any claim arising under or relating to alleged rights in the '555 patent.

PRAYER FOR RELIEF

WHEREFORE, Genentech prays for judgment as follows:

A. that the Court find and declare that the '070 Patent is not and has not been infringed by Genentech or any customers using its products or services;

C. that the Court find and declare that the '555 Patent is not and has not been infringed by

1 Genentech or any customers using its products or services;

2 E. that judgment be entered in favor of Genentech and against GlaxoSmithKline on each of
3 Genentech's claims;

4 F. that the Court find this an exceptional case and award Genentech their costs and attorneys'
5 fees pursuant to 35 U.S.C. § 285 or otherwise; and

6 G. that the Court grant Genentech such other and further relief as the Court deems just and
7 proper.

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9 **JURY DEMAND**

10 Genentech hereby demands a jury trial on all issues and claims so triable.

11 Dated: September 20, 2010

DURIE TANGRI LLP

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13 By:  _____

NAME

14 Attorneys for Plaintiff GENENTECH, INC.
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