TAB 2

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September 10, 2004

VIA E-MAIL

To: Counsel of Record for Plaintiffs*

Re: In re Columbia University Patent Litigation, MDL No. 1592

Dear Counsel:

I am writing to follow up on our telephone conference of September 7, 2004, regarding the scope of the Covenant Not to Sue that Columbia filed on September 1, 2004 ("Covenant"). At the suggestion of the Court, I am memorializing the clarifications that we provided during our telephone conference.

1. The Covenant applies to any claim of any reissued or reexamined version of the '275 patent that is the same as, or substantially identical to, a claim of the '275 patent as it currently reads. The term "substantially identical" is intended to have the same meaning as that term is used in 35 U.S.C. § 252. The Covenant does not apply to any other claim of any reissued or reexamined version of the '275 patent.

2. The Covenant applies to any product currently made, used, offered for sale, sold, or imported by plaintiffs, or any product that was made, used, offered for sale, sold, or imported by plaintiffs prior to the date of the Covenant. Thus, by way of example, Rituxan is a product currently made and sold by Genentech. Columbia will not sue Genentech for infringement of the '275 patent as it currently reads, or seek royalties under the license agreement on the basis of the '275 patent as it currently reads, with respect to Rituxan at any time now or in the future.

3. The Covenant applies only to plaintiffs in the pending actions. The Covenant does not apply to their affiliates or customers.

4. The Covenant does not apply to any claim in any patent that may issue in the future based upon the pending '159 application, irrespective of whether plaintiffs contend that such claim is the same as, or substantially identical to, a claim of the '275 patent as it currently reads.

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During our telephone conference on September 7, plaintiffs also inquired whether Columbia was maintaining the position that their license agreements have been terminated. We will address that issue in a separate letter.

If you have any additional questions concerning the scope of the Covenant, please do not hesitate to contact me.

Very truly yours,



David I. Gindler

cc: Wayne Barsky, Esq.

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