TAB 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE COLUMBIA UNIVERSITY PATENT LITIGATION	MDL No. 1592 (MLW) This Document Relates To All Actions

COLUMBIA UNIVERSITY'S AMENDED AND RESTATED COVENANT NOT TO SUE PLAINTIFFS FOR INFRINGEMENT OF THE '275 PATENT

Dated: October 12, 2004

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ATTORNEYS FOR THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

Pursuant to the Court's Order of October 7, 2004, The Trustees of Columbia University in the City of New York ("Columbia") hereby amends and restates the Covenant Not to Sue filed on September 1, 2004 ("Original Covenant). The covenant set forth below supersedes the Original Covenant, as well as the clarifications of the Original Covenant set forth in the letters from Columbia's counsel dated September 10, 2004, and September 17, 2004. Upon reviewing the Original Covenant and the two letters referenced above, Columbia determined that it could prepare an amended and restated covenant that does not need to make reference to or incorporate any extrinsic materials.

Columbia, on behalf of itself and any successors-in-interest to United States Patent No. 6,455,275 (the "'275 patent"), hereby unconditionally and irrevocably covenants (1) not to assert any claim of patent infringement (including direct infringement, contributory infringement, and inducing infringement) against Genentech, Inc., Biogen Idec MA Inc., Genzyme Corporation, Abbott Bioresearch Center, Inc., Wyeth, Genetics Institute LLC, Johnson & Johnson, Amgen Inc., and Immunex Corporation (collectively, "plaintiffs") under the '275 patent as it currently reads; and (2) not to assert the '275 patent as it currently reads against any plaintiff as a basis to recover royalties under such plaintiff's license agreement with Columbia. This covenant covers any and all methods, processes, and products made, used, offered for sale, sold, or imported by any plaintiff at any time, whether before or after the date of this covenant. As used in this covenant, "products" broadly includes any DNA construct, any cotransformed cell, any cell line of contransformed cells, any cotransformed cell that has expressed any protein (whether or not such protein has sugar attached to it), any protein expressed by a cotransformed cell (whether or not such protein has sugar attached to it), and any other thing that would infringe any claim of the '275 patent

as it currently reads. This covenant covers all claims in the '275 patent as they currently read, and any claim in any reissued or reexamined version of the '275 patent that is the same as, or substantially identical to, any claim of the '275 patent as it currently reads. The term "substantially identical" as used herein is intended to have the same meaning as that term is used in 35 U.S.C. § 252.

This covenant does not extend to (1) any claim in any reissued or reexamined version of the '275 patent that is not the same as, or substantially identical to, any claim of the '275 patent as it currently reads; (2) any claim in any patent that may issue from United States Patent Application No. 08/477,159; or (3) any claim in any other patent, whether related or unrelated to the '275 patent. In addition, this covenant does not extend to any affiliate or customer of any plaintiff.

In granting this covenant to plaintiffs, Columbia in no way concedes plaintiffs' allegations that the '275 patent is invalid, unenforceable, or not infringed. To the contrary, Columbia categorically rejects all such claims by plaintiffs.

October 12, 2004

Respectfully submitted,

THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF NEW YORK

By its attorneys,

_/s/ David I. Gindler_____
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_/s/ Wayne M. Barsky_____
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