

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|------------------|---|-----------------------|
| _____ |) | |
| GENENTECH, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | C.A. No. 17-165 (GMS) |
| v. |) | |
| |) | |
| AMGEN INC., |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

ORDER

WHEREAS, on February 15, 2017, the plaintiff, Genentech, Inc. (“Genentech”) filed a Complaint for Declaratory Judgment, (D.I. 1), to address Amgen Inc.’s (“Amgen”) alleged violations of the Biologics Price Competition and Innovation Act (“BPCIA”), 42 U.S.C. § 262;

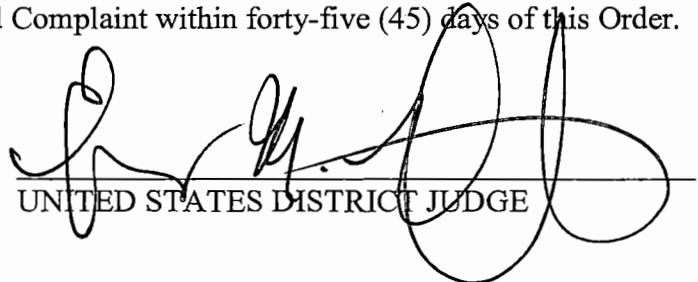
WHEREAS, on March 1, 2017, the court heard oral argument concerning its jurisdiction;

WHEREAS, Amgen moved, as an oral motion, to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(1) for lack subject matter jurisdiction in light of the holding in *Amgen Inc. v. Sandoz Inc.*, 794 F.3d 1347 (Fed. Cir. 2015);

IT IS HEREBY ORDERED:

1. Amgen’s Rule 12(b)(1) Motion to Dismiss Genentech’s Complaint is GRANTED WITHOUT PREJUDICE;
2. Genentech is granted leave to amend its Complaint.
3. Genentech shall file its amended Complaint within forty-five (45) days of this Order.

Dated: March 1, 2017



UNITED STATES DISTRICT JUDGE