

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Genentech, Inc. v. Biogen MA, Inc.

Genentech v. Biogen · No. 23-cv-909-YGR · Decided June 11, 2025

SUMMARY

This is Pretrial Order No. 3 in Genentech, Inc. v. Biogen MA, Inc., issued by the United States District Court for the Northern District of California. The order confirms the trial schedule and establishes procedures concerning witnesses, exhibits, jury selection, expert disclosures, depositions, objections, settlement, courtroom technology, and trial conduct.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Yvonne Gonzalez Rogers
DECIDED	June 11, 2025
DOCKET	23-cv-909-YGR
DISPOSITION	other
PROCEDURAL POSTURE	Pretrial order governing the conduct and preparation of an upcoming jury trial in a pending civil action.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- civil procedure
- motion in limine
- sanctions
- offer of judgment
- commercial litigation

PRACTICE AREAS

- civil procedure
- commercial litigation
- intellectual property

QUESTIONS PRESENTED

- What procedures and scheduling requirements should govern the parties' upcoming jury trial?
- Whether Biogen's unopposed motion for Kristina Dickerson to testify remotely and the related motion to seal should be granted.

KEY QUOTATIONS

“A motion in limine refers “to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered.”” (at 1)

“the parties “may review a juror’s or potential juror’s Internet presence, which may include postings by the juror or potential juror in advance of and during the trial, but . . . may not communicate directly or through another with a juror or potential juror.”” (at 2)

“Failure to comply with the obligations set forth in this order will result in sanctions appropriate to the gravity of the failure, including, but not limited to monetary fines and/or terminating sanctions.” (at 3)

FACTUAL BACKGROUND

Genentech, Inc. and Biogen MA, Inc. were parties to a pending civil action set for jury trial in the Northern District of California. After reviewing the parties' pretrial filings and conducting a pretrial conference, the court addressed the trial schedule and numerous logistical and evidentiary matters. The order also granted Biogen's unopposed request for Kristina Dickerson to testify remotely from Boston because of health concerns related to travel.

PROCEDURAL HISTORY

The court held a pretrial conference on June 9, 2025, considered the parties' filings and submissions, and issued Pretrial Order No. 3. The order confirmed the trial schedule and established procedures concerning motions in limine, witnesses, exhibits, jury selection, expert disclosures, depositions, objections, settlement, and compliance.

DISPOSITION

other

CASES CITED

- Luce v. United States, 469 U.S. 38, 40 n. 2 (1984)
- Batson v. Kentucky, 476 U.S. 79 (1986)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6
GENETECH, INC. 7 Plaintiff, Case No. 23-cv-909-YGR 8 v. PRETRIAL ORDER NO. 3 RE:
PRETRIAL 9 BIOGEN MA, INC., CONFERENCE 10 Defendant. 11 12 Having considered the
filings to date and the arguments and other submissions at the 13 Pretrial Conference, held on June
9, 2025, for good cause shown the Court enters the following 14 orders: 15 1.

Trial Date and Schedule: The trial of this matter is confirmed to proceed in Courtroom 1 on 16
June 27, 2025. Jury selection shall occur that day and trial evidence, including opening 17
statements shall proceed on Monday, June 30, 2025. 18 2. Trial itself shall commence daily at 8:30

a.m. with six hours, 10 minutes of daily trial time. 19 Counsel shall arrive in court early enough to proceed promptly at 8:00 a.m. with the Court to 20 discuss issues outside the presence of the jury.

Trial schedule will be: 21 8:30 a.m. to 10:00 a.m. (1 hour, 30 min), then a twenty-minute break; 22 10:20 a.m. to 11:50 a.m. (1 hour, 30 min), then a forty-minute break; 23 12:30 p.m. to 2:00 p.m. (1 hour, 30 min), then a twenty-minute break; 24 2:20 p.m. to 4:00 p.m. (1 hour, 40 min) 25 3. Additional time may be scheduled for matters outside the presence of the jury as necessary and 26 determined by the Court.

Sidebars are not permitted. Counsel should be prepared to anticipate 27 issues so that they may be addressed outside of normal trial hours. 1 statements and closing arguments. The Court shall reserve one hour each for plaintiff and 2 defendant for closing arguments.

The parties shall receive daily timesheets advising of the 3 time remaining. Any concerns must be raised immediately or will be waived. 4 5. Standard Motions in Limine: The Court hereby orders that: (a) witnesses shall be excluded 5 until testimony is completed; (b) there shall be no reference to or evidence presented of 6 settlement discussions, mediation, or insurance; and (c) there shall be no reference to or 7 evidence presented of wealth or lack thereof of any party except in the punitive damage phase 8 of a case, to the extent it exists.

9 A motion in limine refers “to any motion, whether made before or during trial, to exclude 10 anticipated prejudicial evidence before the evidence is actually offered.” *Luce v. United 11 States*, 469 U.S. 38, 40, n. 2 (1984).

The Court’s rulings on the motions in limine will be 12 issued by separate orders. 13 6. Parties are ordered to admonish witnesses of the Court’s rulings. Failure to comply with a 14 ruling by the Court may result in sanctions, including without limitation the striking of the 15 witness’s entire testimony. 16 7. Witnesses: The parties are limited to calling the witnesses submitted on the list filed for the 17 Pretrial Conference.

Upon a showing of good cause, including for rebuttal or impeachment 18 purposes, additional witnesses will only be allowed by Court order. 19 8. This Order confirms that the parties shall deliver via email a single joint list of all witnesses, 20 attorneys, and others involved in the trial, in alphabetical order to be shown to prospective 21 jurors during voir dire.

22 9. Stipulations/Trial Notices/Trial Subpoenas: The parties proposed Stipulations can be 23 found at Docket No. 169 and are accepted as modified. 24 10. Exhibits and Exhibit Lists: The parties are limited to using the Exhibits submitted on the 25 Exhibit List. No witness may be shown any document or other object until it has been marked 26 for identification using an exhibit number.

The parties shall file updated Exhibit Lists identifying those for which a stipulation of admissibility exists with an "S" in the appropriate 11. Given the length of the exhibit list, the parties confirm that they are proceeding with witness binders. Standing Order re PreTrial Instructions, ¶ 6.h.iii. 12. Parties are reminded that the jury may not be shown any exhibits until admitted into evidence 4 or stipulated by the parties as to admissibility without the express permission of the Court.

5 Standing Order re PreTrial Instructions, ¶ 6.f.iii. 6 13. The parties shall resubmit the Joint Trial Exhibit List in portrait format and shall include the 7 only the columns shown on the Appendix to the Court's standing order on civil trials.

The 8 filing shall occur by Monday, June 23, 2025. 9 14. Equipment: Projectors, screens and similar equipment must be tested in the courtroom prior 10 to the day when it will be used. Arrangements may be made with the Courtroom Deputy, 11 Edwin Cuenco, at (510) 637-3540, as to appropriate time for doing so. Counsel shall send the 12 Court a proposed form of order if they would like to bring equipment into the courthouse.

The 13 United States Marshal Service requires an order. 14 15. Parties may use encrypted digital wireless system that includes a receiver and transmitter with 15 XLR connector. 16 16. The parties shall review the Court's policy regarding the jury's use of a computer during 17 deliberations at <http://cand.uscourts.gov/jurypc>. 18 17. Jurors and Peremptory Challenges: The Court will seat a total of eight (8) jurors and no 19 alternates.

The Court sets the number of peremptory challenges at three (3). Motions under 20 Batson v. Kentucky, 476 U.S. 79 (1986) for improper use of challenges must be made in a 21 timely fashion. Argument on the same shall be made outside the presence of the jury panel. 22 The Court will conduct the voir dire but will allow each side 15 minutes for follow-up. 23 18. In accordance with Model Rule of Professional Conduct 3.5(b) and Formal Opinion for 466, 24 the parties "may review a juror's or potential juror's Internet presence, which may include 25 postings by the juror or potential juror in advance of and during the trial, but... may not 26 communicate directly or through another with a juror or potential juror."

A party "may not, 27 either personally or through another, send an access request to a juror's electronic social media. 1 has not made public and that would not be the type of ex parte communication prohibited by 2 Model Rule 3.5(b)." Further, to the extent that a party asks any follow-up questions to a 3 prospective juror during voir dire regarding information obtained from the review, the party 4 shall disclose the review to the juror.

5 19. Jury Instructions: Revised jury instructions in accordance with the discussion held shall be 6 submitted to the Court no later than noon on June 12, 2025. 7 20. Expert Disclosures/Fed. R. Civ.

P. 68 Offers: By June 12, 2025, and to the extent not 8 already provided, counsel shall lodge with the Court a copy of all expert reports, including any 9 supplements.

Offers of judgment made under Fed. R. Civ. P. 68 shall be lodged no later than 10 June 27, 2025.
11 21. Depositions to be Used at Trial: Any party intending to use a deposition transcript at trial for
12 any purpose shall lodge the signed original (or a certified/stipulated copy if, for any reason, the
13 original is not available) for use by the Court and shall have extra copies available for use by
14 the questioning lawyer and the witness.

All other parties are expected to have their own 15 copies available. The parties shall each prepare and provide an index of the lodged transcripts 16 and shall review the same with the courtroom deputy upon lodging the transcripts.

The index 17 shall provide a space for the party and the courtroom deputy to confirm delivery of and receipt 18 of each transcript. Delivery of the transcripts shall occur no later than June 12, 2025. 19 22. Before each trial day, counsel shall confer with the courtroom deputy and identify which of the 20 transcripts may be used that day. 21 23. Witnesses at Trial: The party presenting evidence shall give the other party written notice of 22 the witnesses to be called unless otherwise agreed upon by the parties themselves.

The parties 23 are admonished that use of trial time is critical given the limited resources of the Court. All 24 parties must have witnesses ready and available to testify. If the party presenting evidence 25 does not have a witness ready to be called once a prior witness steps down, that party may be 26 deemed to have rested its case. Further, and as explained, time does not stop while waiting for 27 witnesses to arrive in Court.

Witnesses may be taken out of order upon stipulation or with 1 promptly called to the attention of opposing counsel and the Court. 2 24. With respect to Biogen's unopposed motion for Kristina Dickerson testify remotely from 3 Boston, Massachusetts given the person health concerns relative to travel, the substantive 4 motion and the motion to seal are granted.

(Docket Nos. 157 and 158.) The witness shall 5 testify from the United States Courthouse in Boston, Massachusetts and each side shall have 6 one lawyer present with the witness for purposes of managing the use of exhibits.

The 7 courtroom deputy will provide more information on the logistics. 8 25. Objections: There shall be no "speaking objections," and no rebuttal unless requested by the 9 Court, in which case it shall be brief – e.g., "hearsay," and if a rebuttal requested, "not offered 10 for the truth." If either counsel needs to make a better record, he/she may do so when the jury 11 is out at the next break.

12 26. Jury Questions: The Court allows written jury questions which it will share with counsel at 13 the break(s) and then place in the record. 14 27. Requests for Transcripts: If transcripts will be

requested during or immediately after the 15 trial, arrangements must be made with the Court Reporter Coordinator (Telephone No. 510- 16 637-3534) by June 12, 2025.

See [https://www.cand.uscourts.gov/about/clerks- 17 office/transcripts-court-reporters/](https://www.cand.uscourts.gov/about/clerks-office/transcripts-court-reporters/). 18
28.Settlement: Counsel shall promptly notify the Court by phone and email (for after hours, use: 19 ygrchambers@cand.uscourts.gov) of any settlement.

The notification shall indicate what 20 further steps need to be taken to finalize the settlement. Unless the Court receives notice of 21 settlement by 12:00 p.m. on the Thursday prior to the Friday jury trial, jury costs will be 22 assessed where the parties do not proceed to trial as scheduled. See Civ. L.R. 40-1. Parties are 23 advised that the trial and all trial-related dates will not be vacated until a formal Notice of 24 Settlement is filed.

25 29.Trial Decorum and Procedure: Counsel, parties, and witnesses are expected to conduct 26 themselves at all times – on or off the record and whether or not in the presence of a jury – in a 27 professional and courteous manner during trial. Do NOT approach other parties’ witnesses] During voir dire you will be allowed to use the bathrooms in the jury room so that you do 2 not share the facilities with the Jurors.

You may not linger in the jury room or use any exit 3 door other than the one leading to the courtroom. 4 || 30. Procedural Stipulations: The parties shall review and file the procedural stipulations 5 included herewith as Attachment A. To the extent any objections exist, the parties shall 6 contact the Court immediately, but in no event later than Monday, June 16, 2025.

7 || 31. Trial Exhibit Certification: Upon conclusion of the trial, the parties shall review the exhibits 8 and confirm the accuracy of those going into the jury room. The parties shall complete, 9 deliver, and file the certification in the form included herewith at Attachment B. 10 || 32. Failure to Comply: Failure to comply with the obligations set forth in this order will result 11 in sanctions appropriate to the gravity of the failure, including, but not limited to monetary 12 fines and/or terminating sanctions.

13 IT Is SO ORDERED.) Dated: 6/11/25 3 15 Poraas Hag tf tere 2 YVONNE GONZALE GERS
16 TED STATES DISTRICT COURT JUDGE 5 17 Z 18 19 20 21 22 23 24 25 26 27 28