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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GENENTECH, INC., a Delaware
corporation,

Plaintiff,

v.

ELI LILLY AND COMPANY, an Indiana
corporation,

Defendant.

Case No.: 18-CV-1518 JLS (JLB)

**ORDER GRANTING JOINT
MOTION TO BIFURCATE
“EXCEPTIONAL CASE”
DETERMINATION AND
ATTORNEY FEES REQUEST**

(ECF No. 78)

Presently before the Court is Plaintiff Genentech, Inc. and Defendant Eli Lilly and Company’s Joint Motion to bifurcate the “exceptional case” determination under 35 U.S.C. § 285 and attorney fees motion under Federal Rule of Civil Procedure 54(d)(2). (“Mot.,” ECF No. 78).

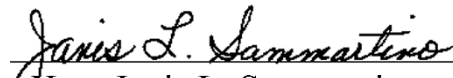
On March 16, 2020, the Court granted Plaintiff’s motion to voluntary dismiss with prejudice this action in its entirety and declared Defendant the prevailing party. *See* ECF No. 77. Defendant now intends to file a motion for attorney fees pursuant to Federal Rule of Civil Procedure 54(d)(2) and 35 U.S.C. § 285. Mot at 2. Under section 285, “a court in an exceptional case may award reasonable attorney fees to the prevailing party in a patent infringement lawsuit.” *Id.* (citing *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014)). The Parties request the Court decide exceptionality before

1 Defendant presents evidence on the amount of its reasonable attorney fees. *Id.* They make
2 this request because the stay-at-home orders issued throughout the country in response to
3 the COVID-19 pandemic has made it difficult for Defendant to collect and timely organize
4 their billing information necessary to meet their burden to prove the reasonableness of
5 attorney fees. *Id.*

6 Good cause appearing, the Court **GRANTS** the Joint Motion. Defendant may file
7 its motion on exceptionality on or before April 1, 2020. Defendant must include a fair
8 estimate of its attorney fees requested in its motion. If the Court determines the case is
9 exceptional and that Defendant is entitled to attorney fees, Defendant must file a motion
10 requesting reasonable attorney fees within fourteen days after the Court issues its order on
11 exceptionality.

12 **IT IS SO ORDERED.**

13 Dated: March 31, 2020

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15 Hon. Janis L. Sammartino
16 United States District Judge
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