

## PATENTWATCH

**Genentech calm Cabilly storm**

A preliminary move by the US Patents and Trademark Office to revoke a Genentech patent has caused the company to issue a statement assuring investors that the preliminary ruling is a “routine and expected next step” in patent re-examination.

The first ‘Cabilly’ patent (US 4,816,567), named after lead inventor Shmuel Cabilly, claims methods for making monoclonal antibodies using recombinant DNA technology and was first issued to Genentech in 1989 at exactly the same time as the similar ‘Boss’ patent (US 4,816,397; named after inventor Michael Boss) was awarded to Celltech. Both companies entered into a lengthy interference dispute, which was resolved in 2001 by an agreement that saw Genentech issued with a second patent (US 6,331,415) that is valid for another 12 years, taking the total length of patent protection for Genentech to a controversial 29 years.

The second patent has since been the subject of much legal wrangling. In April 2003, MedImmune, which pays royalties to use the Cabilly patent for the development of its antiviral drug palivizumab (Synagis) filed a lawsuit against Genentech and Celltech accusing the companies of violating antitrust, patent and unfair competition laws. Judges ruled in favour of Genentech in 2004, but the case is being appealed. However, following a recent request by a third party the Cabilly patent is now being re-examined.

In a preliminary ruling, examiners rejected the ’415 patent because it covers the same invention as the first Cabilly patent, which expires in March 2006. Re-examination could last for years, during which the patent remains valid. Companies developing antibody drugs that might have been clear of the Boss and Cabilly patents in March 2006 could now be forced to buy a license to the technology.

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