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GENENTECH, INC.
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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 PHIGENIX, INC.,

14 Plaintiff,

15 v.

16 GENENTECH, INC.,

17 Defendant.
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Case No. C 15-01238 BLF

NOTICE OF CROSS-APPEAL

1 NOTICE IS GIVEN that Genentech, Inc. (“Genentech”) in the above-entitled action,
2 cross-appeals to the United States Court of Appeals for the Federal Circuit from any portion of
3 the Final Judgment (ECF No. 396) entered on August 23, 2017, that is adverse to Genentech,
4 including but not limited to the Order Granting In Part And Denying In Part Motion For
5 Summary Judgment (ECF No. 327), entered on February 24, 2017, and the Order Granting In Part
6 And Denying In Part Motion For Summary Judgment (ECF No. 392) entered on August 17, 2017.
7 This notice of appeal is timely under Federal Rule of Appellate Procedure 4(a).

8 Genentech files this cross-appeal in an abundance of caution. Genentech recognizes that
9 cross-appeals ordinarily are not required to raise alternative grounds for affirmance, and
10 Genentech’s invalidity defenses may be viewed as alternative grounds for affirming the judgment.
11 *SunTiger, Inc. v. Sci. Research Funding Grp.*, 189 F.3d 1327, 1332-34 (Fed. Cir. 1999)
12 (addressing denial of summary judgment of invalidity as an alternative ground for affirmance).
13 However, the Federal Circuit also has indicated that “where the appellee urges invalidity as a new
14 ground on which to support a judgment of non-infringement, . . . a cross-appeal is necessary since
15 a judgment of invalidity is broader than a judgment of non-infringement.” *TypeRight Keyboard*
16 *Corp. v. Microsoft Corp.*, 374 F.3d 1151, 1157 n.4 (Fed. Cir. 2004); *see Radio Sys. Corp. v.*
17 *Lalor*, 709 F.3d 1124, 1132 (Fed. Cir. 2013). Genentech thus files this cross-appeal to preserve
18 its ability to raise its invalidity defenses on appeal.

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20 Dated: October 5, 2017

MORRISON & FOERSTER LLP

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22 By: /s/ Michael A. Jacobs

23 MICHAEL A. JACOBS

24 Attorneys for Defendant
25 GENENTECH, INC.
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