

Friedman, Dr. Eli  
CONFIDENTIAL

8/17/2007

**Exhibit A**

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
Civil Action No. 05-12237 WGY

AMGEN, INC.,	)	DEPOSITION OF:
	)	DR. ELI FRIEDMAN
	)	
Plaintiff,	)	
	)	**CONFIDENTIAL**
vs.	)	
	)	
	)	
F. HOFFMANN-LA ROCHE LTD., a	)	
Swiss Company, ROCHE	)	
DIAGNOSTICS GmbH, a German	)	
Company, and HOFFMANN-LA	)	
ROCHE, INC., A New Jersey	)	
Corporation,	)	
	)	
Defendants.	)	

TRANSCRIPT of the stenographic notes of the proceedings in the above-entitled matter, as taken by and before LISA FORLANO, RMR, CRR, CSR, CLNR, Notary Public, held at the Marriott Hotel, 333 Adams Street, Brooklyn, New York, on Friday, August 17, 2007, commencing at 9:02 a.m.

(This transcript contains testimony designated CONFIDENTIAL as per Section 5(c) of the Amended Protective Order. Please treat the entire transcript in accordance with the protective order.)

1 knew that Roche was seeking to have it as an  
2 approved drug.

3 Q Having both epogen and Aranesp on the  
4 market, having the choice of two drugs, do you  
5 believe that that's beneficial to physicians?

6 MR. MADRID: Objection, instruct the  
7 witness not to answer. Calling for opinions  
8 that are squarely outside the scope of the  
9 expert report.

10 BY MR. FLEMING:

11 Q Are you going to follow his advice,  
12 Doctor?

13 A Yes.

14 Q As a physician do you want to have  
15 choice of medications for treating your patients?

16 MR. MADRID: Objection, calls for  
17 opinions that are squarely outside the scope  
18 of the report. I instruct the witness not to  
19 answer.

20 BY MR. FLEMING:

21 Q Are you going to follow that, Doctor?

22 A Yes.

23 Q Do you believe that it enhances  
24 patients' quality of life to have choices of all  
25 medications to treat whatever illnesses they may be

1 suffering from?

2 MR. MADRID: I instruct the witness not  
3 to answer. This is as well outside the scope  
4 of the report. He's not made any opinions on  
5 the particular subject.

6 BY MR. FLEMING:

7 Q Are you going to follow that advice,  
8 Doctor?

9 A Yes.

10 Q You talked and you explained to me how  
11 the quality of life covered a wide gamut of things  
12 concerning patients and patient care, correct?

13 A I commented on how the quality -- the  
14 term quality of life was defined. I did not talk  
15 about how quality of life applied to patients.

16 Q Do you think that having your choice of  
17 pharmaceuticals improves the quality of life for  
18 patients?

19 MR. MADRID: I object and I instruct  
20 the witness not to answer. Again, he's not  
21 rendered any opinion on the question of  
22 choice. It's outside the scope of the report.  
23 You're wasting your time in this deposition,  
24 so I instruct the witness not to answer.

25 BY MR. FLEMING:

1 MR. MADRID: I object. It calls for a  
2 legal conclusion with respect to the  
3 description of the patent. It's also vague  
4 and ambiguous.

5 THE WITNESS: Yes.

6 BY MR. FLEMING:

7 Q You didn't analyze it?

8 A I did not analyze it.

9 Q It was the problem with my question,  
10 not your answer.

11 MR. FLEMING: Can I have 51, please.

12 MR. MADRID: Let's take a break.

13 MR. FLEMING: Would you like a break?

14 THE WITNESS: Yes, I would like a  
15 break.

16 VIDEO OPERATOR: Going off the record,  
17 2:58 p.m.

18 End of tape number four.

19 (Brief recess.)

20 VIDEO OPERATOR: We're returning to the  
21 record 3:11.

22 Beginning of tape number five.

23 MR. MADRID: I want to make a statement  
24 for the record. This morning there were  
25 questions asked with respect to quality of

1 life and to the extent that there were  
2 instructions not to answer those questions,  
3 I'm going to not -- I'm going to withdraw  
4 those instructions not to answer and offer  
5 counsel an opportunity to ask his questions.  
6 However, it still remains our position that  
7 the testimony sought is outside the scope of  
8 the report and it's irrelevant. I will make  
9 my objections one by one as the questions go  
10 on.

11 MR. FLEMING: Counsel, your conduct  
12 this morning in directing this witness not to  
13 answer, as I feel inappropriately doing so,  
14 has impeded my ability in the flow of my  
15 questions in this deposition. To at this late  
16 hour, quarter after three, after we're gone on  
17 for this long with this witness to now to  
18 change your position is now prejudicial to me  
19 and I'm going to do what I can do with this  
20 witness during this deposition and if I feel  
21 based on your change of heart that I need a  
22 further deposition, I'll apply to the Court  
23 for that, but I'm going to take the position  
24 that by virtue of you having instructed this  
25 witness not to answer, you have precluded this

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1 A Yes.

2 Q And this patent has expired, do you  
3 know that?

4 A I've heard --

5 MR. MADRID: Objection, calls for a  
6 legal conclusion.

7 THE WITNESS: I've heard that.

8 BY MR. FLEMING:

9 Q Did you do any comparison of the claims  
10 of this patent and the claims of the two patents you  
11 looked at, the '422 and the '933?

12 A No, because I felt I would not have  
13 been competent to do that comparison.

14 Q And you're not offering any opinions  
15 about the -- any relationship between the claims of  
16 this '008 Patent, which is Friedman-22 and the two  
17 patents that you comment upon in your report,  
18 correct?

19 A No, I am not.

20 Q Are you aware that there are other  
21 patents-in-suit in this case beyond the '422 and the  
22 '933?

23 A I have been so advised.

24 Q And am I correct that you're not  
25 offering any opinions on those patents at all?

1 A Correct.

2 Q And you have no intention of doing so?

3 A If I show the good judgment I should  
4 show, I will not.

5 Q Do you have any understanding as to  
6 whether what you have termed the quote, unquote,  
7 long felt need in the Chronic Renal Failure area in  
8 the United States was satisfied by the product of  
9 the claims of this '088 Patent?

10 MR. MADRID: Objection, vague and  
11 ambiguous, calls for a legal conclusion.

12 THE WITNESS: My problem in answering  
13 would be made easier if you could tell me the  
14 principal claim and conclusion of the '088  
15 Patent.

16 BY MR. FLEMING:

17 Q Well, it's entitled DNA Sequences and  
18 Encoding Erythropoietin.

19 Do you see that?

20 A Yes, but I am not comfortable in saying  
21 this early what the main visceral thrust of each  
22 patent was and why the expired patent cripple  
23 anything or doesn't cripple anything. I'm not the  
24 person to ask.

25 Q So you don't know, am I correct?

1 A That's a better answer.

2 Q As you sit here whether, in fact,  
3 whatever alleged invention of the '088 would have  
4 satisfied that need that you identified in your  
5 report as opposed to the other two patents you  
6 looked at?

7 MR. MADRID: Objection, misleading,  
8 lacks foundation.

9 THE WITNESS: Yes.

10 BY MR. FLEMING:

11 Q I'm correct?

12 A Yes.

13 Q You're not saying it doesn't, you just  
14 haven't done the analysis?

15 A I could go one step beyond that and say  
16 I don't know that I'm the person to do the analysis,  
17 just looking at the pages in the patent leaves me in  
18 the dust.

19 Q Okay.

20 MR. FLEMING: Could we mark this as 23,  
21 please. 23, please.

22 (AM-ITC0056301 - AM-ITC0056310 was  
23 marked Friedman-23 for identification.)

24 BY MR. FLEMING:

25 Q Dr. Friedman, I've put in front of you