

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMGEN INC.,
Plaintiff,
v.
F. HOFFMANN-LA ROCHE
LTD., a Swiss Company, ROCHE
DIAGNOSTICS GmbH, a German
Company and HOFFMANN-LA ROCHE
INC., a New Jersey Corporation,
Defendants.
Civil Action No.: 05-12237 WGY

DECLARATION OF GEOFFREY M. GODFREY IN SUPPORT OF AMGEN'S
BENCH MEMORANDUM AND OFFER OF PROOF REGARDING
NO OBVIOUSNESS-TYPE DOUBLE PATENTING

I, Geoffrey M. Godfrey, declare under penalty of perjury as follows:

- 1. I am an attorney at the law firm of Day Casebeer Madrid & Batchelder LLP, counsel for plaintiff Amgen Inc. I am admitted to practice law before this Court (pro hac vice) and all of the Courts of the State of California.
2. I make this declaration of my own personal knowledge. If called to testify as to the truth of the matters stated herein, I could and would testify competently.
3. Attached hereto as Exhibit A is a true and correct copy of the double patenting portion of Roche's Response to Amgen's Interrogatory Nos. 9 and 11, served January 11, 2007.
4. Attached hereto as Exhibit B is a true and correct copy of the double patenting portion of Roche's Supplemental Response to Amgen's Interrogatory Nos. 9 and 11, served February 9, 2007.
5. Attached hereto as Exhibit C is a true and correct copy of the double patenting

portion of Roche's Third Supplemental Response to Amgen's Interrogatory Nos. 9 and 11, served April 2, 2007.

6. Attached hereto as Exhibit D is a true and correct copy of the double patenting portion of Roche's Fifth Supplemental Response to Amgen's Interrogatory Nos. 9 and 11, served May 1, 2007.

7. Attached hereto as Exhibit E is a table listing the claims of U.S. Patent App. No. 06/675,298, grouped according to the PTO's July 3, 1986 restriction requirement.

8. Attached hereto as Exhibit F is a table summarizing the differences between each '008 claim asserted as an ODP reference by Roche and each claim-in-suit from the later-issued '868 and '698 patents.

9. Attached hereto as Exhibit G is a true and correct copy of a document titled "Amendment," dated October 21, 1985, from the prosecution history of U.S. Patent No. 4,766,075 (Application No. 06/483,052), to Goeddel et al., assigned to Genentech, Inc.

10. Attached hereto as Exhibit H is a true and correct copy of pages 195-197, 226-227, and 231-232 of the transcript of the June 20, 2007 deposition of Dr. Edward E. Harlow.

11. Attached hereto as Exhibit I is a true and correct copy of Exhibit E to a document titled "Applicant's Second Preliminary Amendment," dated May 24, 1988, from the prosecution history of U.S. Patent No. 5,441,868.

12. Attached hereto as Exhibit J is a true and correct copy of a document titled "Amendment," dated November 21, 1996, from the prosecution history of U.S. Patent No. 5,753,486 (Application No. 08/472,549), to Goeddel et al., assigned to Genentech, Inc.

Signed this 26th day of September, 2007.

By: /s/ Geoffrey M. Godfrey
Geoffrey M. Godfrey