

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

AMGEN INC., )  
)  
Plaintiff, )  
) Civil Action No.: 05 Civ. 12237 WGY  
v. )  
)  
F. HOFFMANN-LAROCHE LTD., )  
ROCHE DIAGNOSTICS GMBH, and )  
HOFFMANN LAROCHE INC., )  
)  
Defendants. )

**DECLARATION OF CHARLES KUNG**

I, Charles K.-H Kung, declare:

1. I live at 19237 Tramore Lane in Mokena, IL, a southwestern suburb of Chicago.
2. I am retired, but formerly worked as chief research technologist for Dr. Eugene Goldwasser in the Department of Biochemistry at the University of Chicago. I worked for Dr. Goldwasser from 1960 to 2000.
3. I am submitting this declaration because I may not be able to testify live at trial in the matter. I have to travel to Chicago today to attend to an urgent personal matter, and due to this personal matter, I am unable to return to testify live at trial in this matter.
4. During my employment with Dr. Goldwasser, I would consult with Dr. Goldwasser about experimental design and then perform those experiments. I worked primarily on purification of erythropoietin ("EPO") from human urine.
5. I have reviewed a document that I am informed has been admitted as Trial Exhibit 2002. It is a scientific paper by Takaji Miyake, myself, and Dr. Goldwasser entitled "Purification of Human Erythropoietin." Trial Exhibit 2002 was published in August 10, 1977 issue of the Journal of Biological Chemistry, Vol. 252, No. 15, pages 5558-5564.
6. As reported in Trial Exhibit 2002, we purified milligram quantities of human urinary EPO ("uEPO") to apparent homogeneity. We purified this uEPO from 2550 liters of urine collected from aplastic anemia patients in Kumamoto City, Japan.
7. The purified urinary EPO was stored in polypropylene vials in a -20°C freezer in Dr. Goldwasser's lab at the University of Chicago at least until I retired in 2000. Only Dr. Goldwasser and I had access to the material in that freezer.
8. I would take purified EPO out of the freezer as needed for performing various experiments in our lab and also for shipping to various laboratories around the world.

9. I have reviewed a copy of a handwritten record I kept from around 1976 to around 1996 of shipments of various EPO preparations, including purified urinary erythropoietin, out of the lab. I am informed that this document has been admitted as Trial Exhibit 16. It was my routine practice to make an entry in the log at the time I made a shipment, indicating the date, preparation, amount sent in units, and specific activity in units of EPO per absorbance unit of the material sent, along with the name of the recipient.

10. The entry for April 5, 1982, found on the fifth page of Exhibit 16, is in my handwriting. This entry indicates that on April 5, 1982, I sent 210  $\mu$ L (containing 30  $\mu$ g) of the HT 7-26-76 Fraction 3  $\beta$ -EPO preparation to "C. Paul."

11. The entry for October 10, 1984, found on the sixth page of Exhibit 16, is also in my handwriting. This entry indicates that on October 10, 1984, I sent 586  $\mu$ L (containing 200  $\mu$ g) of the M-7-72-2  $\alpha$ -EPO preparation to Por Lai. I recall Por Lai was a scientist at Amgen.

12. I have reviewed a document that I am informed has been marked as Exhibit CFA, which is a photocopy of an Amgen laboratory notebook (Notebook Number 4790). I have also reviewed the original laboratory notebook that corresponds to Exhibit CFA. Exhibit CFA contains a color photocopy of page 79 of the laboratory notebook, which also contains the number marking AM 87 000333. The page marked AM 87 000333 has a red and a green label on it.

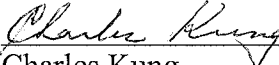
13. I have seen the red and green labels on the third page of Exhibit CFA before. I prepared those labels. My handwriting is on them. They are labels in my handwriting. It was my practice to attach labels to each vial of urinary EPO that I sent from our laboratory to scientists that requested a sample of urinary EPO.

14. The green label on the page of Exhibit CFA marked AM 87 000333 states “200  $\mu\text{g}$   $\alpha$ -EPO M-7-72-2,” and the red label on that page states “30  $\mu\text{g}$   $\beta$ -EPO (210  $\mu\text{l}$ ) HT 7-27-76 (3).”

15. Based on my review of Exhibits 16 and CFA, I believe that I affixed the red label on the page marked AM 87 000333 to the April 5, 1982 shipment of 30  $\mu\text{g}$   $\beta$ -EPO to C. Paul. I further believe that I affixed the green label on that page to the October 10, 1984 shipment of 200  $\mu\text{g}$  of  $\alpha$ -EPO to Por Lai. I prepared these labels when I sent the samples.

16. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: September 28, 2007

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Charles Kung