

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMGEN, INC.,

Plaintiff,

v.

F. HOFFMANN-LA ROCHE, LTD.,
ROCHE DIAGNOSTICS GMBH, and
HOFFMANN-LA ROCHE, INC.

Defendants.

Civil Action No. 05-CV-12237 WGY

**ROCHE'S BENCH MEMORANDUM REGARDING UNCONTROVERTED
EVIDENCE OF RECORD THAT DR. FRITSCH ISOLATED THE EPO GENE
PRIOR TO THE EFFECTIVE FILING DATE OF THE PATENTS-IN-SUIT**

Roche submits this bench memorandum to clarify for the Court that the testimony of Dr. Fritsch read to the jury by Roche on September 7, 2007, reflects that Dr. Fritsch isolated the EPO gene *before* the effective filing date of the patents-in-suit.

The effective filing date of the patents-in-suit is November 30, 1984. According to Dr. Fritsch's own deposition testimony, which is now a part of the trial record, Dr. Fritsch cloned the EPO gene on July 12, 1984,¹ and expressed EPO in CHO cells in September 1984.² Thus, Dr. Fritsch completed his work before Amgen's effective filing date. There is no evidence to the contrary.

¹ Trial Transcript September 7, 2007 at 353:11-353:24 and Fritsch Notebook 193 (Trial Exhibit 2084).

² Trial Transcript September 7, 2007 at 360:5-360:21.

Dated: October 1, 2007
Boston, Massachusetts

Respectfully submitted,

F. Hoffmann-La Roche Ltd, Roche Diagnostics
GmbH, and Hoffmann-La Roche Inc.

By their Attorneys,

/s/ Vladimir Drozdoff

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on the above date.

/s/ Vladimir Drozdoff _____
Vladimir Drozdoff