

E. THE CLAIMS OF DR. LIN'S '868 AND '698 PATENTS CLAIM PROCESSES FOR PRODUCING EPO PRODUCTS THAT UNEXPECTEDLY POSSESS *IN VIVO* BIOLOGICAL ACTIVITY

421. I understand that Amgen is asserting '868 claims 1 and 2 and '698 claims 4-9 against Roche's production of the EPO contained in its MIRCERA™ product which is being imported and used in the United States.

422. As with the product claims, the principal difference between the asserted '868 and '698 claims, and the '008 claims, is that each of the asserted '868 and '698 claims recite a *positive requirement* for the product of the claimed process to *have* the *in vivo* biological activity of causing bone marrow cells to increase production of reticulocytes and red blood cells. As explained above, the '008 claims lack this critical requirement.

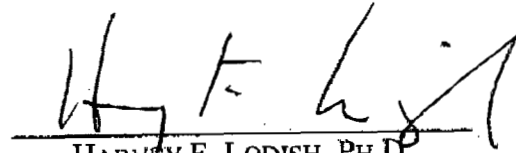
423. A detailed discussion of the differences between the asserted process claims of the '868 and '698 patents on the one hand and the '008 claims on the other hand can be found at Exhibit G.

424. In my opinion, these significant differences between the '868 and '698 asserted claims and the '008 claims represent patentable distinctions and preclude a determination that the '868 and '698 asserted claims are invalid for obviousness-type double patenting over the '008 claims.

F. CLAIM 7 OF DR. LIN'S '349 PATENT CLAIMS A PROCESS FOR PRODUCING EPO PRODUCTS AT UNEXPECTEDLY HIGH LEVELS

425. I understand that Amgen is asserting '349 claim 7 against Roche's production of the EPO contained in its Mircera™ product that is being imported and used in the United States. The complete text of '349 claim 7, and representative claims 4 and 6 from which it depends, follows:

Executed this 11th day of May, 2007 at Boston, Massachusetts.



HARVEY F. LODISH, PH.D.