

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05 CV 12237 WGY
F. HOFFMANN-LAROCHE LTD.,)	
a Swiss Company, ROCHE DIAGNOSTICS)	
GMBH, a German Company, and)	
HOFFMANN LAROCHE INC., a New)	
Jersey Corporation,)	
)	
Defendants.)	
)	

**PLAINTIFF AMGEN INC.’S MOTION TO PROVIDE THE COURT WITH
ADDITIONAL DOCUMENTS FROM THE INTERFERENCE PROCEEDINGS
THAT ARE NECESSARY FOR COMPLETENESS AND TO PROVIDE A COMPLETE
UNDERSTANDING OF THE PROCEEDINGS**

During the first day of the hearing before the Court on obviousness-type double patenting, at the request of Roche, the Court took judicial notice of a brief filed by Amgen in the interference proceedings before the Patent Office (‘097 Brief for Party Lin, Ex. GUK). This brief, however, is only one of many documents submitted during the interference proceedings and must be considered in the context of the totality of the arguments being made by the parties and the Board’s decisions on the issues addressed in the ‘097 Lin Interference Brief.

Accordingly, Amgen seeks to admit additional briefs, motions, oppositions, and rulings filed during these same interference proceedings. Amgen requests that the Court also take judicial notice of the following:

- Ex. BYH: Preliminary Motions by Fritsch in the ‘096 and ‘097 Interferences, including Motions G and Q (See pages 84-86 and 152-153). Preliminary Motions G and Q are referenced in the quote pointed to by Roche on page 26 of

the '097 Lin Interference Brief (Ex. GUK) during the hearing on October 1, 2007 and are necessary for completeness.

- Ex. BYG: Oppositions by the Party Lin to the Preliminary Motions by Party Fritsch. Party Lin's Oppositions to Motions G and Q (see pages 81 and 149) explain its position in regard to Fritsch's motion to combine the '096 and '097 interferences in Motions G and Q and are necessary for completeness.
- Ex. BYJ and CAB: Decisions on Motions in '096 Interference and '097 Interference, which include the Board's rulings on Motions G and Q, and are necessary for completeness.
- Exs. BXY, GXH, and CAL: Fritsch's Final briefs in the '096, '097 and '334 Interferences respectively. The briefs show that Fritsch maintained the same position in all three interferences. Notably, the basis for the Board's final decision in the '097 Interference regarding priority was based on Fritsch's oral concession at final hearing and in his briefing that priority of the '096 is dispositive of priority in the '097 Interference. *See Fritsch v. Lin*, 21 U.S.P.Q.2d 1737, 1738 (B.P.A.I 1991) ("With regard to the issue of prior inventorship in particular, we note that Fritsch conceded at final hearing that priority in each of the related interferences turns on isolation of the EPE gene, i.e. determination of priority in Interference No. 102,096 is dispositive of the issue of priority in the present interference (also see FB-24).” When the Board referred to “FB-24,” it was referring to page 24 of the Fritsch Brief, which stated that priority of the '097 “turns upon first conception of the purified and isolated EPO gene.” These documents are necessary for completeness.

Roche has sought to misconstrue the position of Amgen and Dr. Lin in the interference proceedings. Amgen requests that the Court take judicial notice of the above documents which are necessary for completeness of the arguments pointed to by Roche in the Interferences.

Dated: October 4, 2007

Respectfully Submitted,

AMGEN INC.,
By its attorneys,

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CERTIFICATE PURSUANT TO LOCAL RULE 7.1

I certify that counsel for the parties have conferred in an attempt to resolve or narrow the issues presented by this motion and no agreement was reached.

/s/ Michael R. Gottfried
Michael R. Gottfried

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 and paper copies will be sent to those indicated as non-registered participants on October 4, 2007.

/s/ Michael R. Gottfried
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