

**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.: 1:05-CV-12237 WGY

**PLAINTIFF’S [AMENDED PROPOSED] JURY VERDICT**

Plaintiff respectfully submits this Amended Proposed Verdict Form.

1. Considering each claim separately, has Roche established by clear and convincing evidence that any of the following claims are invalid?

Please circle the box that reflects your verdict. Circling “Invalid” is an answer for Roche and circling “Valid” is an answer for Amgen.

<b>VALIDITY</b>		
<b>WHO MUST PROVE</b>	<b>Roche</b>	
<b>BURDEN OF PROOF</b>	<b>Clear and Convincing</b>	
	<b>(For Roche)</b>	<b>(For Amgen)</b>
<b>Patent No. 5,955,422</b>		
Claim 1	<b>Invalid</b>	<b>Valid</b>
<b>Patent No. 5,547,933</b>		
Claim 3	<b>Invalid</b>	<b>Valid</b>
Claim 7	<b>Invalid</b>	<b>Valid</b>
Claim 8	<b>Invalid</b>	<b>Valid</b>
Claim 9	<b>Invalid</b>	<b>Valid</b>
Claim 11	<b>Invalid</b>	<b>Valid</b>
Claim 12	<b>Invalid</b>	<b>Valid</b>
Claim 14	<b>Invalid</b>	<b>Valid</b>
<b>Patent No. 5,441,868</b>		
Claim 1	<b>Invalid</b>	<b>Valid</b>
Claim 2	<b>Invalid</b>	<b>Valid</b>
<b>Patent No. 5,618,698</b>		
Claim 6	<b>Invalid</b>	<b>Valid</b>
Claim 7	<b>Invalid</b>	<b>Valid</b>
Claim 8	<b>Invalid</b>	<b>Valid</b>
Claim 9	<b>Invalid</b>	<b>Valid</b>
<b>Patent No. 5,756,349</b>		
Claim 7	<b>Invalid</b>	<b>Valid</b>

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

- 2.a. Considering each claim separately, has Amgen established by a fair preponderance of the evidence that any of the following claims will be infringed by Roche?
- 2.b. If you find no literal infringement for any patent claim, only then should you go on to answer the “Infringement by the Doctrine of Equivalents” question for that claim.

Please circle the box that reflects your verdict. Circling “Yes” is an answer for Amgen and circling “No” is an answer for Roche.

	LITERAL INFRINGEMENT		INFRINGEMENT BY THE DOCTRINE OF EQUIVALENTS	
WHO MUST PROVE	Amgen		Amgen	
BURDEN OF PROOF	Fair Preponderance		Fair Preponderance	
	Infringed (For Amgen)	Not Infringed (For Roche)	Infringed (For Amgen)	Not Infringed (For Roche)
<b>Patent No. 5,547,933</b>				
Claim 3	Yes	No	Yes	No
Claim 7	Yes	No	Yes	No
Claim 8	Yes	No	Yes	No
Claim 9	Yes	No	Yes	No
Claim 12	Yes	No	Yes	No
<b>Patent No 5,441,868</b>				
Claim 1	Yes	No	Yes	No
Claim 2	Yes	No	Yes	No
<b>Patent No 5,618,698</b>				
Claim 6	Yes	No	Yes	No
Claim 7	Yes	No	Yes	No
Claim 8	Yes	No	Yes	No
Claim 9	Yes	No	Yes	No
<b>Patent No 5,756,349</b>				
Claim 7	Yes	No	Yes	No

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

3. Considering each patent separately, has Roche established by clear and convincing evidence that Amgen, with intent to deceive the Patent Office, failed to disclose material information to the Patent Office or submitted materially false information to the Patent Office, and in so doing, engaged in inequitable conduct during the prosecution of that patent?

Please circle the box that reflects your verdict. Circling “Yes” is an answer for Roche and circling “No” is an answer for Amgen.

<b>INEQUITABLE CONDUCT</b>		
<b>WHO MUST PROVE</b>	<b>Roche</b>	
<b>BURDEN OF PROOF</b>	<b>Clear and Convincing</b>	
	<b>Inequitable Conduct</b>	
	<b>(For Roche)</b>	<b>(For Amgen)</b>
<b>Patent No 5,955,422</b>		
	<b>Yes</b>	<b>No</b>
<b>Patent No. 5,547,933</b>		
	<b>Yes</b>	<b>No</b>
<b>Patent No 5,441,868</b>		
	<b>Yes</b>	<b>No</b>
<b>Patent No 5,618,698</b>		
	<b>Yes</b>	<b>No</b>
<b>Patent No 5,756,349</b>		
	<b>Yes</b>	<b>No</b>

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

DATED: October 14, 2007

Of Counsel:

Stuart L. Watt  
Wendy A. Whiteford  
Monique L. Cordray  
Darrell G. Dotson  
Kimberlin L. Morley  
Erica S. Olson  
AMGEN INC.  
One Amgen Center Drive  
Thousand Oaks, CA 91320-1789  
(805) 447-5000

Respectfully Submitted,

AMGEN INC.,

/s/ Michael R. Gottfried

D. Dennis Allegretti (BBO# 545511)  
Michael R. Gottfried (BBO# 542156)  
Patricia R. Rich (BBO# 640578)  
DUANE MORRIS LLP  
470 Atlantic Avenue, Suite 500  
Boston, MA 02210  
Telephone: (857) 488-4200  
Facsimile: (857) 488-4201

Lloyd R. Day, Jr. (pro hac vice)  
DAY CASEBEER MADRID & BATCHELDER LLP  
20300 Stevens Creek Boulevard, Suite 400  
Cupertino, CA 95014  
Telephone: (408) 873-0110  
Facsimile: (408) 873-0220

William G. Gaede III (pro hac vice)  
McDERMOTT WILL & EMERY  
3150 Porter Drive  
Palo Alto, CA 94304  
Telephone: (650) 813-5000  
Facsimile: (650) 813-5100

Kevin M. Flowers (pro hac vice)  
MARSHALL, GERSTEIN & BORUN LLP  
233 South Wacker Drive  
6300 Sears Tower  
Chicago, IL 60606  
Telephone: (312) 474-6300  
Facsimile: (312) 474-0448

**CERTIFICATE OF SERVICE**

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

*/s/ Michael R. Gottfried*

Michael R. Gottfried