

EXHIBIT 5

USDC - Depo: Haselbeck, Anton RESTRICTED-ACCESS CONFIDENTIAL 3/2/2007 8:44:00 AM

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMGEN, INC.,)
) Civil Action No.
Plaintiff,) 05 Civ. 12237 WGY
)
vs.)
)
F. HOFFMANN-LA ROCHE LTD., a)
Swiss Company, ROCHE)
DIAGNOSTICS GmbH, a German)
Company, and HOFFMANN-LA)
ROCHE, INC., a New Jersey)
Corporation,)
)
Defendants.)
-----)

Friday, March 2, 2007
8:44 a.m.

*** RESTRICTED ACCESS ***

Videotaped Deposition of ANTON
HASELBECK, Ph.D., held at the offices of
Duane Morris, LLP, 380 Lexington Avenue,
New York, New York 10168, pursuant to
Notice, before Otis Davis, a Notary
Public of the State of New York.

(This transcript contains testimony
designated confidential as per Section 5(c)
of the Amended Protective Order.
Please treat the entire transcript in
accordance with the protective order.)

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2 MS. BEN-AMI: Objection. Calls

3 for expert testimony.

4 A. Since we only produce it with
5 our system, I have no information on how it
6 would be using a gDNA-derived system.

7 MR. GALVIN: We can take a
8 break so we can change the tape.

9 THE VIDEOGRAPHER: We're now
10 off the record at 2:53.

11 (Recess taken.)

12 THE VIDEOGRAPHER: This marks
13 the beginning of tape 6, volume 1 in
14 the deposition of Dr. Anton Haselbeck.

15 We are now on the record at 3:03.

16 (Haselbeck Exhibit 34, CERA
17 Physical and Chemical characterization
18 slide presentation, Bates stamped R
19 005453580-005453608, marked for
20 identification, as of this date.)

21 Q. Dr. Haselbeck, let me hand you
22 what has been marked as Exhibit 34 to your
23 deposition, bearing production numbers R
24 005453580 through 608.

25 Do you recognize Exhibit 34?

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2 A. I do recognize the slides

3 produced here in Exhibit 34.

4 Q. Was this a slide presentation

5 you prepared?

6 A. I cannot say this with

7 certainty. It may be, but it could also be

8 prepared by some of my colleagues.

9 Q. Can you turn to page 588.

10 A. Yes.

11 Q. What is being depicted on 588?

12 A. This represents an attempt

13 to -- or a picture of a computer

14 simulation, at least one way of computer

15 simulating the structure, three-dimensional

16 structure of Roche 50-3821.

17 Q. Do you know who prepared this

18 picture?

19 A. I believe it has been prepared

20 by somebody from the computer or the

21 structural modeling group in Penzberg,

22 Germany.

23 Q. Do you know who within the

24 structural modeling group was responsible

25 for generating the pictures on 580?

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2 relating to EPO; is that right? And if I

3 got that wrong, please explain.

4 MS. BEN-AMI: Object to the

5 form of the question.

6 Mischaracterizes his prior testimony.

7 No firsthand knowledge.

8 A. I have not done the experiment,

9 so I cannot answer with certainty which

10 data exactly have been used to come up with

11 these pictures.

12 Q. Have you had any discussion

13 with any of the people in the structural

14 modeling group in Penzberg about how they

15 were developing the three-dimensional model

16 of Roche 50-3821?

17 A. I was involved in discussions

18 to explore ways to model the structure.

19 Q. And during those discussions,

20 did the individuals from the structural

21 modeling group at Roche Penzberg indicate

22 to you that they were using published data

23 relating to the three-dimensional structure

24 of EPO in order to model part of Roche

25 50-3821?

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2 also been published, correct?"

3 A. I recall vaguely publications

4 describing binding sites. I would not be

5 in a position to confirm that these are the

6 true and only binding sites. I remember

7 there are reports in the literature

8 describing binding sites for EPO to EPO

9 receptor.

10 Q. Is it your understanding that

11 this structural modeling group at Roche

12 made use of the published data regarding

13 the binding sites between EPO and the EPO

14 receptor to generate the depiction shown at

15 589 on Exhibit 34?

16 A. This I do not know. I have

17 absolutely no information. If they were

18 aware of the binding sites and used this

19 information, I don't know.

20 Q. The structural modeling group

21 at Roche, they are scientists, not artists,

22 right?

23 MS. BEN-AMI: Objection. Calls

24 for interpretation.

25 A. They are scientists.

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2 reflect that someone has lost my

3 Exhibit 5, which I expect to be me.

4 Q. If you turn to 705, is this one

5 of the other depictions that you were

6 referring to?

7 A. This is one of the others, but

8 this is still not the final one.

9 Q. This is from July 2006.

10 A. Yeah, but there has been

11 others. And again, here in my

12 recollection, when I just look at it, I

13 still see the wrong carbohydrate structures

14 on this one.

15 Q. On this depiction on page 705

16 of Exhibit 5, the PEG little beads or

17 things on the tail look a lot thicker.

18 A. Yes.

19 Q. Is that more accurate, less

20 accurate, or just an alternative way to

21 show it?

22 MS. BEN-AMI: Object to the

23 form. Calls for expert testimony and

24 speculation.

25 A. In my opinion, it's more

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2 accurate.

3 Q. And why do you say that?

4 A. To my understanding, it does
5 reflect more the size of the polymer than
6 this little line on the other picture,
7 which is, my understanding, not
8 corresponding to the actual size of the
9 polymer.

10 Q. The PEG moiety in Roche 50-3821
11 accounts for roughly 50 percent of the
12 molecular weight of the molecule, correct?

13 MS. BEN-AMI: Object to the
14 form. Mischaracterizes the prior
15 testimony. Mischaracterization.
16 Calls for speculation.

17 A. The molecular weight in that
18 sense has nothing to do with structure and
19 space. It's a completely different thing.

20 Q. Does the depiction on 705 --
21 How is the size of each PEG
22 component modeled?

23 MS. BEN-AMI: Object to the
24 form. Calls for expert testimony,
25 speculation, to the extent that the

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2 witness has already testified he has

3 no firsthand knowledge.

4 A. I have no firsthand knowledge

5 how this is done.

6 Q. I'm just trying to understand.

7 You said you think this depiction of the

8 PEG component is more accurate than the

9 other depiction, and I'm just trying to

10 understand: Is there a scientific basis,

11 is there a data basis for your view?

12 MS. BEN-AMI: Calls for expert

13 testimony.

14 A. I believe there is a scientific

15 basis for different pictures.

16 Q. And what is that scientific

17 basis?

18 A. I do not know.

19 Q. Is it based on the measurement

20 of the size of these chemical components?

21 MS. BEN-AMI: Objection. Asked

22 and answered. He just said "I do not

23 know."

24 A. I have absolutely --

25 absolutely, I have no information on how

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2 this is done. This is not my expertise,

3 and there is nothing else I can tell you.

4 Q. So you believe this picture is

5 better than this picture, but beyond that,

6 you can't tell me why?

7 A. I cannot tell you why when you

8 ask for the details. I still do believe

9 this is more accurate because it is based

10 on the true situation a polymer would be

11 in. But I have no information on the

12 details, how this is calculated, based on

13 what, and so on.

14 Q. You said that the July 2006

15 version was still not correct and that

16 you've seen better versions; is that

17 correct?

18 A. That's correct.

19 Q. When have you seen these better

20 versions?

21 A. Towards the end of 2006 I

22 believe, I don't know exactly the date,

23 when I was shown a modified version.

24 Q. And who showed you that?

25 A. I think I have seen it the

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2 first time in a presentation given by
3 either the modeling people or it could have
4 been through Michael Jarsch. He could have
5 presented me with the new structures.

6 Q. Dr. Haselbeck, when you saw
7 this new version of the Roche 50-3821
8 depiction, was it in an animated form or
9 was it a piece of paper like this?

10 A. I have seen a piece of paper
11 like this and I have also seen an animated
12 version, yes.

13 Q. You saw this in late 2006,
14 correct?

15 A. Late 2006, last quarter of 2006
16 somewhere. I don't recall exactly when I
17 have seen those data.

18 Q. Do you know the name of the
19 person in the modeling group that would
20 have shown you this if it wasn't Michael
21 Jarsch?

22 A. I don't recall.

23 Q. Did they provide you with an
24 electronic copy, forward to you an e-mail?

25 A. I think those data are stored

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2 on a common drive. I think they are not
3 sent back and forth by e-mail because of
4 the size of the data. I think they are
5 stored on a common drive, which is
6 accessible to me and others.

7 Q. And you can access that and
8 click on it and see the animation?

9 A. Yes.

10 MR. GALVIN: Counsel, again, we
11 request the production of the model
12 and images and animation files that
13 Dr. Haselbeck saw in late 2006. We
14 request that they be produced in their
15 electronic data format.

16 MS. BEN-AMI: I think
17 everything gets produced
18 electronically, doesn't it?

19 MR. GALVIN: We want not a
20 picture of it, but the program.

21 MS. BEN-AMI: Yesterday you
22 said you had no models even though you
23 had a document with a model in it.

24 Today he has at least two
25 models, production has been going on,

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2 I think today is the last day of major
3 production, and then there is some
4 cleanup production over the next week.

5 So we'll look and see if it was
6 produced, why don't you look and see
7 if it was produced, and let's see
8 where we are.

9 MR. GALVIN: I know the native
10 file was not produced.

11 MS. BEN-AMI: Do you know for
12 sure?

13 MR. GALVIN: Yes.

14 MS. BEN-AMI: Do you know
15 whether the copy was produced?

16 MR. GALVIN: That I don't know.

17 MS. BEN-AMI: I would be much
18 more happy with these requests if when
19 I ask for color copies of notebook
20 pages from Amgen, Amgen would give
21 them to me. But nonetheless, we will
22 look.

23 Q. I believe you mentioned
24 yesterday you thought some models of
25 three-dimensional structures of Roche

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2 C E R T I F I C A T E

3 S T A T E O F N E W Y O R K)

4 : s s .

5 C O U N T Y O F N E W Y O R K)

6

7 I, OTIS DAVIS, a Notary Public

8 within and for the State of New York,

9 do hereby certify:

10 That ANTON HASELBECK, Ph.D.,

11 the witness whose deposition is

12 hereinbefore set forth, was duly sworn

13 by me and that such deposition is a

14 true record of the testimony given by

15 the witness.

16 I further certify that I am not

17 related to any of the parties to this

18 action by blood or marriage, and that

19 I am in no way interested in the

20 outcome of this matter.

21 IN WITNESS WHEREOF, I have hereunto

22 set my hand this 6th day of March 2007.

23

24

25

OTIS DAVIS