

KAYE SCHOLER LLP

Peter Fratangelo
212 836-8771
Fax 212 836-6364
pfratangelo@kayescholer.com

425 Park Avenue
New York, New York 10022-3598
212 836-8000
Fax 212 836-8689
www.kayescholer.com

January 4, 2007

BY FAX AND EMAIL

Michele E. Moreland, Esq.
McDermott, Will & Emery
3150 Porter Dr.
Palo Alto, CA 94304-1212
Fax: 650-813-5100
Email: wgaede@mwe.com

***Re: Amgen, Inc. v. F. Hoffman-La Roche Ltd, Roche Diagnostics GmbH,
and Hoffmann-LaRoche Inc., Civ. No. 05-CV-12237WGY, D. Mass***

Dear Michele:

I am writing regarding Amgen's incomplete production of materials belonging to Dr. Eugene Goldwasser, particularly lab notebooks, notes, and other documents recording experiments, thoughts, and notes of Dr. Goldwasser. During the ITC action, Kevin Flowers represented to us on a telephone conference that Amgen has produced all of the documents that it collected from Dr. Goldwasser, but that does not appear to be the case (see attached email from July 2006 regarding discussion of documents related to Dr. Goldwasser). Roche has requested and is entitled to all of Dr. Goldwasser's papers regarding his work, and communications with Amgen, regarding erythropoietin, including a complete set of his lab notebooks, whether in formal lab style notebooks, spiral notebooks, memos or any other form, or any other documents that concern Dr. Goldwasser's work on erythropoietin. These documents are included in the documents requested in Roche Requests for Production Nos. 46, 49, and 89, and are directly relevant to several of Roche's affirmative defenses and counterclaims, including issues of invalidity, unenforceability due to inequitable conduct, unclean hands, file wrapper estoppel, prosecution laches estoppel, and Walker Process antitrust. Amgen has not produced this material to us.

The Amgen ITC production does not contain custodian information identifying a single document as belonging to Dr. Goldwasser, so we cannot tell if any documents belonging to him or his research assistants were produced in that production. What documents were produced that could even potentially belong to Dr. Goldwasser are disorganized, incomplete, unidentified, without any indication they belong to Dr. Goldwasser or his research assistants, and totally fail to comply with the Federal Rules of Civil Procedure for production of documents. As best we can

31392566.DOC

tell based on the condition of the Amgen ITC production, none of Dr. Goldwasser's lab notebooks or communications with Amgen were produced to us. For example, there is not a single lab notebook, in any form, that has any indication that it was maintained or belonged to Dr. Goldwasser. There are some random pages of notes that seem to relate to scientific work produced by Amgen, but these do not indicate clearly that they belong to Dr. Goldwasser (or anyone else for that matter), and they are not complete documents in any case. Additionally, the small production made by Amgen last week does not contain anything that could be Dr. Goldwasser's materials, and certainly not his lab notebooks or that relate to his work on erythropoietin.

Let us know immediately precisely what materials Amgen has collected from Dr. Goldwasser, his research assistants, or the University of Chicago that once belonged to Dr. Goldwasser or his assistants, and produce these documents to Roche immediately, including a complete set of Dr. Goldwasser's and his assistants' lab notebooks, and other documents concerning their work on erythropoietin. These documents must be produced as whole, complete documents, with indication that they belong to Dr. Goldwasser or his assistants. Amgen should produce these with custodian information included. If Amgen contends that it has produced any of Dr. Goldwasser's materials or papers responsive to our document requests or related to his work on erythropoietin in complete form to Roche, please identify these documents by production numbers. If Amgen contends that any of Dr. Goldwasser's lab notebooks, in whatever form they were maintained, or any other document concerning Dr. Goldwasser's work on erythropoietin or responsive to our document requests no longer exist, or Amgen claims they exist but Amgen does not have them or copies of them, inform us immediately what happened to them, when they were lost or destroyed, at whose direction they were destroyed, from where they disappeared, and/or where these lab notebooks exist now. In short, produce Dr. Goldwasser's complete documents, or tell us where they are or what happened to them if you contend it is impossible to produce them all.

In addition, since Amgen's attorneys at Marshall Gerstein have informed us that they also represent Dr. Goldwasser, please confirm that Dr. Goldwasser represents that he does not have or know of any documents that are responsive to our requests identified above, including any lab notebooks or other documents concerning his work on erythropoietin, that are not included in the complete set of materials that Amgen will produce to us. We understand that the University of Chicago may maintain an archive of Dr. Goldwasser's documents that remains in Dr. Goldwasser's exclusive control. Please immediately inform us of the contents of this archive, its location, whether all documents from the archive that relate to Dr. Goldwasser's work on erythropoietin or are otherwise responsive to our document requests have been produced by Amgen, and identify these produced documents.

Roche is entitled to a complete set of all of Dr. Goldwasser and his assistants' lab notebooks, and other documents relating to erythropoietin, including any documents concerning communications with Amgen by Dr. Goldwasser or his assistants. Given the short time frame to complete written discovery, and all fact discovery in this case, Amgen must produce Dr. Goldwasser's materials to us immediately so that we can review them and be sure that Amgen has completely produced these materials. All of Dr. Goldwasser's materials regarding

KAYE SCHOLER LLP

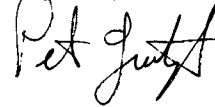
3

January 4, 2007

erythropoietin, including a complete set of his lab notebooks, must be produced as complete documents and identified as belonging to Dr. Goldwasser. Amgen's obligation is to produce this material in its entirety, not only to produce what Amgen may have produced in other cases. This is entirely separate and new litigation, and mere reproduction of incomplete documents, out of order pages, and unidentified notebook pages that Amgen may have produced in other cases is unacceptable.

We request that we have a telephone conference to discuss when Amgen will produce all of Dr. Goldwasser's materials relating to erythropoietin, including his and his assistants' lab notebooks. We also request that we discuss the issues raised in my letter of January 3 to you regarding Amgen's general lack of production of documents in this case so far, and the specific documents and issues raised in that letter. We suggest Friday January 5 or Monday January 8 at 3pm New York time, 12pm West Coast for this conference, please let us know your availability.

Very truly yours,



Peter Fratangelo

Attachment

cc: Deborah Fishman
Mark Izraelewicz
Julia Huston
Patricia Carson

31392566.DOC

Patricia Carson/NY/US/KSFHH

07/01/2006 08:34 PM

To
Patricia Carson/NY/US/KSFHH@KSFHHNotes
cc
BBorel@kayescholer.com; dlopez@kayescholer.cc
"O'Brien, Kevin M"
<Kevin.M.O'Brien@BAKERNET.com>; "Kevin
Flowers" <kflowers@marshallip.com>; Matthew
McFarlane/NY/US/KSFHH@KSFHHNotes; Leora F
Ami/NY/US/KSFHH@KSFHHNotes
Subject
RE: Roche Subpoenae to Eugene Goldwasser and
University of Chicago

Dear Kevin & Kevin,

Following up on your representations, we have identified certain documents and transcripts within Amgen's production that apparently correspond to documents from Dr. Goldwasser's files and deposition testimony from Dr. Goldwasser. that we can confirm that we have identified all responsive documents please identify by July 5th, the bates ranges corresponding to all documents that are responsive to our subpoenas on Dr. Goldwasser and the University of Chicago. Once we receive this information we can discuss production of additional documents encompassed by our subpoenas. addition, although Amgen has apparently produced Dr. Goldwasser's deposition transcripts from prior litigations, as I indicated would likely be the case during our telephone conversation, we must press our request for Dr. Goldwasser's deposition in this action. Please let me know Dr. Goldwasser's availability during the week of July 12th. Naturally, we do our best to accommodate Dr. Goldwasser's schedule.

Thanks,
Pat

Pat Carson
Kaye Scholer LLP
425 Park Ave.
New York, NY 10022
212-836-7466

Patricia Carson/NY/US/KSFHH

06/28/2006 03:32 PM

To "Kevin Flowers" <kflowers@marshallip.com>
cc "O'Brien, Kevin M"
<Kevin.M.O'Brien@BAKERNET.com>; Matthew
McFarlane/NY/US/KSFHH@KSFHHNotes;
dlopez@kayescholer.com; BBorel@kayescholer.cc
Subject RE: Roche Subpoenae to Eugene Goldwasser and
University of Chicago

Dear Kevin & Kevin,

Thank you for meeting with me today by telephone. Based on your representations that the majority of the documents encompassed by our subpoenas and all transcripts of Dr. Goldwasser's ITC and District Court testimony from the prior litigations have now been produced to us by Amgen, we agree to put off the date for filing objections until after Roche had the opportunity to consider the production to date.

Best regards,

Pat

Pat Carson
Kaye Scholer LLP
425 Park Ave.
New York, NY 10022
212-836-7466

"Kevin Flowers" <kflowers@marshallip.com>

06/28/2006 03:10 PM

To <PCarson@kayescholer.com>; "O'Brien, Kevin M"
<Kevin.M.O'Brien@BAKERNET.com>
cc <MMcFarlane@kayescholer.com>
Subject RE: Roche Subpoenae to Eugene Goldwasser and
University of Chicago

Pat,

Kevin O'Brien and I are on the call now.

Kevin

-----Original Message-----

From: PCarson@kayescholer.com [mailto:PCarson@kayescholer.com]

Sent: Wednesday, June 28, 2006 10:50 AM

To: O'Brien, Kevin M

Cc: Kevin Flowers; MMcFarlane@kayescholer.com

Subject: Re: Roche Subpoenae to Eugene Goldwasser and University of Chicago

Call-in info for today's call at 3PM EDT:

Toll Free Dial In Number: (866)205-4243

Int'l Access/Caller Paid Dial In Number: (801)828-9903

ACCESS CODE: 7312035

Pat Carson
Kaye Scholer LLP
425 Park Ave.
New York, NY 10022
212-836-7466
"O'Brien, Kevin M" <Kevin.M.O'Brien@BAKERNET.com>

"O'Brien, Kevin M"
<Kevin.M.O'Brien@BAKERNET.com>

06/28/2006 07:35 AM

To

<PCarson@kayeschol
er.com>;
<kflowers@marshall
lip.com>

cc

Subject

Re: Roche Subpoena
Eugene Goldwasser
University of Chicago

Thanks Pat. I'll be out of the office but available. Will you circulate a call number?

Kevin O'Brien

Kevin O'Brien

-----Original Message-----

From: PCarson@kayescholer.com <PCarson@kayescholer.com>
To: Kevin Flowers <kflowers@marshallip.com>
CC: O'Brien, Kevin M
Sent: Wed Jun 28 01:55:49 2006
Subject: Re: Roche Subpoenae to Eugene Goldwasser and University of Chicago

I apologize for the delay in responding. Friday is fine. Let's talk at 3 tomorrow
Thanks,
Pat

----- Original Message -----

From: "Kevin Flowers" [kflowers@marshallip.com]
Sent: 06/27/2006 03:17 PM
To: <pcarson@kayescholer.com>
Cc: "O'Brien, Kevin M" <Kevin.M.O'Brien@BAKERNET.com>
Subject: RE: Roche Subpoenae to Eugene Goldwasser and University of Chicago

Pat,

I now understand that noon tomorrow is going to be tough for Kevin O'Brien (both he and his colleague dealing with this issue are out of town tomorrow). Can we push it back to 2 or 3 pm EDT tomorrow (your choice)?

Also, as I mentioned to you on the phone today, we were hoping that we could talk on the phone today or tomorrow and then serve any objections/responses to the subpoena tomorrow afternoon (although Dr. Goldwasser, who's been and still is out of town, did not actually receive the subpoena directed to him until June 21, so his objections/motion would be due July 1). However, given that due date, the timing of our call tomorrow, and the Baker & McKenzie attorneys' travel schedules tomorrow, can Roche agree that any objections/responses/motions re the subpoenas served on Goldwasser and the University may instead be served on Friday, June 30?

Best regards,

Kevin

-----Original Message-----

From: Kevin Flowers
Sent: Tuesday, June 27, 2006 1:42 PM
To: 'O'Brien, Kevin M'
Cc: 'pcarson@kayescholer.com'
Subject: RE: Roche Subpoenae to Eugene Goldwasser and University of Chicago

Kevin,

Pat Carson and I just spoke and we are thinking that we could get together by phone tomorrow at noon EDT (this afternoon doesn't work for Pat). If that works for you, Pat will circulate a call-in number to us.

Best regards,

Kevin

Kevin M. Flowers, Ph.D., Esq.
Marshall, Gerstein & Borun LLP
6300 Sears Tower
233 South Wacker Drive
Chicago Illinois 60606
Tel. (main) 312-474-6300
Tel. (direct) 312-474-6615
Fax 312-474-0448

The material in this transmission contains confidential information intended only for the addressee. If you are not the addressee, any disclosure or use of this information by you is strictly prohibited. If you have received this transmissio in error, please delete it, destroy all copies, and notify Marshall, Gerstein & Borun LLP by telephone (312) 474-6300. Thank you.

* * * *

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department regulations, we inform you that any U.S. federal tax advice contained in this correspondence (including any attachments) is not intended or written to be used, and cannot be used for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Pursuant to requirements related to practice before the Internal Revenue Service, any tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for the purposes of (i) avoiding penalties imposed under the United States Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter.

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Click here or visit www.bakernet.com/disclaimer_bm for other important advice concerning this message.

* * * *

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department regulations, we inform you that any U.S. federal tax advice contained in this correspondence (including any attachments) is not intended or written to be used, and cannot be used for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.