

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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

**DECLARATION OF DEBORAH E. FISHMAN IN SUPPORT OF PLAINTIFF
AMGEN INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL**

I, Deborah E. Fishman, declare as follows:

1. I am an attorney admitted to practice law before all of the Courts of the State of California and before this Court (*pro hac vice*). I am a partner of the law firm of Day Casebeer Madrid & Batchelder LLP, counsel for plaintiff Amgen Inc. in this matter.

2. I make this declaration of my own personal knowledge. If called to testify with respect to the truth of the matters stated herein, I could and would do so competently.

3. On December 29 (as well as on other occasions), I met and conferred with Pat Carson, counsel for Roche, regarding the production of Roche's cell line. During our conversation, Ms. Carson and I discussed the relevance of Roche's cell line to ascertaining the production levels specified in Amgen's patent claims. I asked whether Ms. Carson could identify for me any place in Roche's BLA or other documents where Roche may have identified the EPO production levels of its cell line in units measured by radioimmunoassay and stated that she was not aware of any such documents or whether such documents even existed. It was during this discussion that Ms. Carson proposed reaching a stipulation on certain characteristics of Roche's cell line (expressly including the claimed production levels) in lieu of producing the cell line to Amgen. As described in the accompanying motion, Roche backed away from its own suggestion.

4. Attached hereto as Exhibit 1 is a true and correct copy of a letter dated December 11, 2006 from D. Fishman to H. Suh.

5. Attached hereto as Exhibit 2 is a true and correct copy of a letter dated December 13, 2006 from H. Suh to D. Fishman.

6. Attached hereto as Exhibit 3 is a true and correct copy of a letter dated December 14, 2006 from D. Fishman to H. Suh.

7. Attached hereto as Exhibit 4 is a true and correct copy of a letter dated December 14, 2006 from K. Carter to H. Suh.

8. Attached hereto as Exhibit 5 is a true and correct copy of Defendants' Supplemental Responses to Amgen Inc.'s First Set of Requests for Admission (Nos. 1-22).

9. Attached hereto as Exhibit 6 is a true and correct copy of a letter dated January 3, 2007 from D. Fishman to P. Carson.

10. Attached hereto as Exhibit 7 is a true and correct copy of a letter dated December 29, 2006 from D. Fishman to P. Carson.

11. Attached hereto as Exhibit 8 is a true and correct copy of a letter dated October 5, 1999 from C. Stretch to D. Gilbert in *Amgen v. Hoechst Marion Roussel, Inc. and Transkaryotic Therapies, Inc.*, USDC District of Massachusetts Civil Action No. 97-10814-WGY.

12. Attached hereto as Exhibit 9 is a true and correct copy of a letter dated November 16, 1999 from R. Galvin to E. DiLello in *Amgen v. Hoechst Marion Roussel, Inc. and Transkaryotic Therapies, Inc.*, USDC District of Massachusetts Civil Action No. 97-10814-WGY.

13. Attached hereto as Exhibit 10 is a true and correct copy of the Joint Motion to Amend Stipulated Protective Order and Exhibit A, filed on November 5, 1999 in *Amgen v. Hoechst Marion Roussel, Inc. and Transkaryotic Therapies, Inc.*, USDC District of Massachusetts Civil Action No. 97-10814-WGY, Docket # 205.

14. Attached hereto as Exhibit 11 is a true and correct copy of a letter dated December 2, 1999 from C. Stretch to E. Di Lello in *Amgen v. Hoechst Marion Roussel,*

Inc. and Transkaryotic Therapies, Inc., USDC District of Massachusetts Civil Action No. 97-10814-WGY.

15. Attached hereto as Exhibit 12 is a true and correct copy of pages 9-12 of the transcript of December 15, 1999 Summary Judgment Hearing in *Amgen v. Hoechst Marion Roussel, Inc. and Transkaryotic Therapies, Inc.*, USDC District of Massachusetts Civil Action No. 97-10814-WGY.

16. Attached hereto as Exhibit 13 is a true and correct print-out from the Electronic Court Filing System for the District of Massachusetts (Boston) for Civil Case # 97-10813-WGY that includes Docket #288, which states: “The Court further Orders the following: The dft is to produce the cells no later than Mon. Dec. 20, 1999...”

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signed this 10th day of January, 2007.

_____/s/ Deborah E. Fishman_____

Deborah E. Fishman