

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

\_\_\_\_\_  
AMGEN INC., )  
) )  
Plaintiff, )  
) )  
vs. ) )  
) )  
F. HOFFMANN-LA ROCHE LTD, )  
ROCHE DIAGNOSTICS GmbH, and )  
HOFFMANN-LA ROCHE INC. )  
) )  
Defendants. )  
\_\_\_\_\_ )

CIVIL ACTION No.: 05-cv-12237WGY

**DECLARATION OF THOMAS F. FLEMING IN SUPPORT OF DEFENDANTS  
PROPOSED CLAIM CONSTRUCTION**

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F. HOFFMANN-LA ROCHE LTD,  
ROCHE DIAGNOSTICS GmbH, and  
HOFFMANN-LA ROCHE INC.*

Dated: March 5, 2007

I, Thomas F. Fleming, hereby declare under penalty of perjury that:

1. I am an attorney admitted to the Bar of the State of New York and am a Partner in the law firm of Kaye Scholer LLP, counsel for Defendants in the above captioned case.

2. I make this reply declaration in further support of Defendants Proposed Claim Construction, dated March 5, 2007.

3. Exhibit A is a true and correct copy of U.S. Patent Nos. 5,441,868.

4. Exhibit B is a true and correct copy of U.S. Patent Nos. 5,547,933.

5. Exhibit C is a true and correct copy of U.S. Patent Nos. 5,618,698.

6. Exhibit D is a true and correct copy of U.S. Patent Nos. 5,621,080.

7. Exhibit E is a true and correct copy of U.S. Patent Nos. 5,756,349.

8. Exhibit F is a true and correct copy of U.S. Patent Nos. 5,955,422.

9. Exhibit G is a true and correct copy of Expert Declaration of Thomas R. Kadesch, Ph.D., Professor of Genetics at the University of Pennsylvania School of Medicine, and attached exhibits.

10. Exhibit H is a true and correct copy of May 5, 1999, Amendment, 08/100,197-33.

11. Exhibit I is a true and correct copy of Goldwasser Depo. Tr. February 14, 2007

12. Exhibit J is a true and correct copy of March 31, 1995, Office Action, '197 FH.

13. Exhibit K is a true and correct copy of February 10, 1989, Office Action, 07/113,178-9

14. Exhibit L is a true and correct copy of June 2, 1989, Amendment Under Rule 116, 113,178.

15. Exhibit M is a true and correct copy of May 24, 1988, Second Preliminary Amendment, 07/113,179-8.

16. Exhibit N is a true and correct copy of September 1, 1993, Office Action, 07/113,179-29.

17. Exhibit O is a true and correct copy of January 10, 1994, Amendment and Response, 07/113,179-33.

18. Exhibit P is a true and correct copy of Brief for Lin in Interference No. 102,097

19. Exhibit Q is a true and correct copy of U.S. Patent No. 4,399,216.

20. Exhibit R is a true and correct copy of MANUAL OF PATENT EXAMINING PROCEDURE § 2173.05(h) I

21. Exhibit S is a true and correct copy of MANUAL OF PATENT EXAMINING PROCEDURE § 608.01(p) Completeness [R-3].

Dated: March 5, 2007

Respectfully submitted,

/s/ Thomas F. Fleming

**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 (NEF) and paper copies will be sent to those indicated as non registered participants on the above date.

/s/ Thomas F. Fleming  
**Thomas F. Fleming**