

**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'  
MEMORANDUM IN OPPOSITION TO AMGEN, INC.'S  
CLAIMS CONSTRUCTION BRIEF**

Lee Carl Bromberg (BBO# 058480)  
Julia Huston (BBO# 562160)  
Keith E. Toms (BBO# 663369)  
Nicole A. Rizzo (BBO# 663853)  
BROMBERG & SUNSTEIN LLP  
125 Summer Street  
Boston, MA 02110  
Tel. (617) 443-9292

Leora Ben-Ami (*pro hac vice*)  
Mark S. Popofsky (*pro hac vice*)  
Patricia A. Carson (*pro hac vice*)  
Thomas F. Fleming (*pro hac vice*)  
Howard S. Suh (*pro hac vice*)  
Peter Fratangelo (BBO# 639775)  
KAYE SCHOLER LLP  
425 Park Avenue  
New York, New York 10022  
Tel. (212) 836-8000

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

Dated: March 19, 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 declaration in further support of Defendants' Opposition to Amgen's Claims Construction Brief filed on March 19, 2007
3. Exhibit T is a true and correct copy of February 27, 2007 Letter From Thomas Fleming to Deborah E. Fishman..
4. Exhibit U is a true and correct copy of U.S. Patent No. 4,703,008.
5. Exhibit V is a true and correct copy of U.S. Patent No. 6,583,272.
6. Exhibit W is a true and correct copy of Pollack, A., "Rivals Laying Siege to Amgen's Near Monopoly in Anemia Drugs," The New York Times, Dec. 23, 2005.
7. Exhibit X is a true and correct copy of pages from November 30, 1984, Application No. 06/675,298.
8. Exhibit Y is a true and correct copy of June 16, 1986, Office Action, 06/675,298-8.
9. Exhibit Z is a true and correct copy of June 18, 1987 Office Action, 06/675,298-17.
10. Exhibit AA is a true and correct copy of July 10, 1987, Amendment and Reply, 06/675,298-20.
11. Exhibit BB is a true and correct copy of pages from October 23, 1987, Application No. 07/113,178.
12. Exhibit CC is a true and correct copy of June 2, 1988, Office Action, 07/113,178-4.

13. Exhibit DD is a true and correct copy of June 2, 1989, Amendment Under Rule 116, 07/113,178-11.
14. Exhibit EE is a true and correct copy of June 20, 1989, Office Action, 07/113,178-13.
15. Exhibit FF is a true and correct copy of July 12, 1989, Amendment, 07/113,178-15.
16. Exhibit GG is a true and correct copy of December 12, 1989, Examiner Interview, 07/113,178-17.
17. Exhibit HH is a true and correct copy of January 1, 1990, Amendment Under Rule 116, 07/113,178-19.
18. Exhibit II is a true and correct copy of May 24, 1988, Second Preliminary Amendment, 07/113,179-8.
19. Exhibit JJ is a true and correct copy of September 27, 1988, Applicant's Reply, 07/113,179-14.
20. Exhibit KK is a true and correct copy of excerpts from Goldwasser Deposition Transcript dated February 14, 2007.
21. Exhibit LL is a true and correct copy of Morgan Stanley Equity Research, "Amgen: Some Setbacks for Competitors in EU," Feb. 26, 2006.
22. Exhibit MM is a true and correct copy of excerpts from *Amgen Inc. v. Hoechst Marion Roussel Inc.*, No. 97-10814 (D. Mass.), Trial Tr. (June 7, 2000).
23. Exhibit NN is a true and correct copy of MANUAL OF PATENT EXAMINING PROCEDURE § 2111.03 [R-3].

24. Exhibit OO is a true and correct copy of THE AMERICAN HERITAGE DICTIONARY 1399 (4th ed. 2006).

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

26. Exhibit QQ is a true and correct copy December 11, 1996, Interview Summary, 0-8/468,381-7.

Dated: March 19, 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**