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February 27, 2007

**VIA FAX AND EMAIL**

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

Dear Deborah:

I write in response to your letter requesting further information regarding Roche's claim constructions prior to the *Markman* briefs. At this time, with the understanding that Roche is not bound by these definitions and reserves the right to revise them at any time throughout the *Markman* briefing process, and as supplementation to Roche's interrogatory responses, we provide the following additional information.

Subject to the above caveats, Roche agrees with the following prior claim constructions:

<b><i>Term</i></b>	<b><i>Definition</i></b>	
<b>non-human DNA sequences which control transcription</b>	"DNA sequences not part of the human genome that initiate and may regulate the process of transcription"	Amgen I, 126 F. Supp. 2d at 87-88 (D. Mass. 2001)
<b>DNA encoding</b>	"the genetic instructions for"	Amgen IV, 339 F. Supp. 2d at 251 (D. Mass. 2004).
<b>mammalian cells</b>	"cells from a warm-blooded animal, whose young are fed by milk secreted from mammary glands"	Amgen I, 126 F. Supp. 2d at 86 (D. Mass. 2001).
<b>mature erythropoietin amino acid sequence of FIG. 6</b>	"the fully realized form of amino acid sequence of Figure 6"	Amgen I, 126 F. Supp. 2d at 86-87 (D. Mass. 2001). This is limited to the 166 amino acid erythropoietin of Figure 6. <u>No equivalents are allowed.</u> Amgen V 457 F.3d at

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<b>mature erythropoietin amino acid sequence of FIG. 6</b>	“the fully realized form of amino acid sequence of Figure 6”	Amgen I, 126 F. Supp. 2d at 86-87 (D. Mass. 2001). This is limited to the 166 amino acid erythropoietin of Figure 6. <i>No equivalents are allowed.</i> Amgen V 457 F.3d at 1312-17 (Fed. Cir. 2006).
<b>non-naturally occurring</b>	“not occurring in nature”	Amgen I 126 F. Supp. 2d at 91 (D. Mass. 2001).
<b>operatively linked</b>	"the promoter DNA is linked to the EPO DNA in a way that maintains the capability of the promoter DNA to initiate transcription of the EPO DNA."	Amgen I, 126 F. Supp. 2d at 89-90 (D. Mass. 2001)
<b>vertebrate cells</b>	“cells from an animal having a backbone”	Amgen I, 126 F. Supp. 2d at 85 (D. Mass. 2001).

Moreover, subject to the above caveats, Roche would agree to the following of Amgen's proposed definitions, if modified, as shown below (bracketed terms are deleted and underlined are added):

<b>having the in vivo biological property of causing bone marrow cells to increase production of reticulocytes and red blood cells</b>	“causing bone marrow cells to increase production of reticulocytes and red blood cells in [the body] <u>a living organism.</u> ”
<b>(a) growing, under suitable nutrient conditions, mammalian host cells</b>	growing, under conditions appropriate [and conducive to] <u>for</u> mammalian host cell growth, cells from a warm-blooded animal, whose young are fed by milk secreted from mammary glands
<b>amplified DNA</b>	an increased number of copies <u>of a particular gene</u> relative to [other DNA sequences in the genome] <u>the number of copies inserted by transformation or transfection, and which results in an increased production of the gene product by the cell.</u>

Subject to the above caveats, Roche agrees to the following definition proposed by Amgen without change:

<b>which can be propagated in vitro</b>	“which can be grown in culture outside of a living body”
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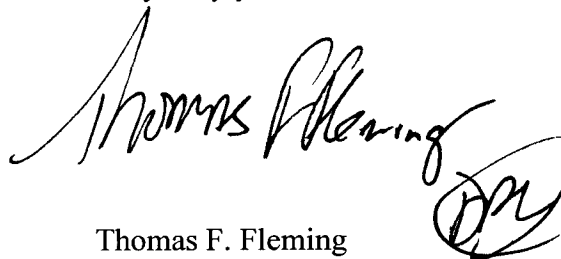
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It also is our view that terms such as "comprising the step of" and "comprising" are legal terms and need not be defined.

Very truly yours,

A handwritten signature in black ink that reads "Thomas F. Fleming". To the right of the signature is a circular stamp containing the initials "DF".

Thomas F. Fleming

cc: Michelle Moreland  
Mark Izraelewicz  
Julia Huston  
Patricia Carson  
Manvin Mayell