

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

Civil Action
No. 97-10814-WGY

3 * * * * *
4 * * * * *

5 AMGEN, INC., *

6 Plaintiff, *

7 v. *

DAILY TRANSCRIPT
OF THE EVIDENCE
(Volume 7)

8 HOECHST MARION ROUSSEL, INC. *

and *

9 TRANSKARYOTIC THERAPIES, INC., *

10 Defendants. *

11 * * * * *

12 BEFORE: The Honorable William G. Young,
District Judge

13 APPEARANCES:
14

15 DAY CASEBEER MADRID & BATCHELDER, LLP (By Lloyd R.
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- and -

18 MARSHALL, O'TOOLE, GERSTEIN, MURRAY & BORUN (By
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- and -

20 DUANE, MORRIS & HECKSCHER, LLP (By D. Dennis
21 Allegretti, Esq.), One International Place, Boston,
Massachusetts 02110-2600, on behalf of the Plaintiff

22
23 1 Courthouse Way
24 Boston, Massachusetts
25 June 7, 2000

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1 patent. So it's easier, I guess, everything's all together
 2 in one volume.
 3 Q. All right. Now, we may go back and forth between the
 4 applications and the '933 patent, so keep those in mind,
 5 please.
 6 Let's talk first about your first patent
 7 application. That appears in Exhibit AH.
 8 MR. ALLEGRETTI: And if your Honor please, we have
 9 also numbered all the pages of Exhibit AH from 1, ah,
 10 through to 361 in the upper right-hand corner, just for
 11 convenience, reference purposes, that are not part of the
 12 original applications.
 13 Q. Dr. Lin, can you summarize for the Court the principal
 14 or salient subjects that appear in the specification of
 15 your first application?
 16 A. The --
 17 MR. SCHWARTZ: Could I hear that question again?
 18 MR. ALLEGRETTI: It was clumsy. I will ask it
 19 again, if your Honor please.
 20 Q. Can you summarize for us your view of the main
 21 information contained in your first application?
 22 A. The main information of this application is summarized
 23 actually in the brief summary. And this is in page 21,
 24 this Tab 1, page 21.
 25 Q. What is the number in the upper right-hand corner?

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1 A. Page 21, upper right-hand corner. Should I read this?
 2 Q. No.
 3 A. Okay.
 4 Q. Have you prepared a demonstrative exhibit as an aid for
 5 us to go through the sequence of your applications?
 6 A. Yes.
 7 Q. Can you tell us what that is?
 8 A. Yes, this is in Exhibit BEA. It's in this volume,
 9 Volume 2. This exhibit summarized the principal
 10 achievement that was made in each application.
 11 MR. ALLEGRETTI: May I hand your Honor a separate
 12 copy of that?
 13 THE COURT: Yes.
 14 MR. ALLEGRETTI: It's in the book, but it's
 15 easier.
 16 THE COURT: I'm sorry, if I hadn't followed, yes.
 17 You go right ahead. All right, go ahead.
 18 Q. Explain what that demonstrative chart is.
 19 A. Yes. I just said earlier, this summarized the
 20 principal, the main achievement that we accomplished in
 21 each application.
 22 The first application, the principal achievements
 23 are the cloning of human EPO gene and monkey EPO cDNA. And
 24 then we have sequence with monkey cDNA, some partial
 25 sequence of human EPO gene. And we have expressed monkey

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1 EPO in CHO cell -- in COS, in C-O-S, COS cells. This is
 2 monkey kidney cells.
 3 Q. Does the brief summary you referred us to at page 21
 4 provide any description of the EPO you had made by that
 5 time?
 6 A. Yes. We describe the -- here, it says: For the first
 7 time, novel purified and isolated polypeptide products
 8 having part or all of the primary structural conformations,
 9 (i.e., continuous sequence of amino acid residues) and one
 10 or more of the biological properties, and the in vivo and
 11 in vitro biological property of the naturally occurring
 12 erythropoietin. And these products are characterized by
 13 being the product of microbial expression.
 14 At this time, the only way we know how to
 15 characterize the product, was by the way they were made.
 16 MR. SCHWARTZ: Excuse me, Mr. Allegretti, which
 17 page are you reading from?
 18 MR. ALLEGRETTI: I thought he was reading from
 19 page 21.
 20 MR. SCHWARTZ: I did, too, but --
 21 MR. ALLEGRETTI: Forgive me, your Honor, I should
 22 not speak to counsel, but he asked me a question.
 23 MR. SCHWARTZ: I'm just trying to follow the
 24 examination.
 25 THE COURT: Yes. What page?

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1 MR. ALLEGRETTI: If I might respond to counsel
 2 through your Honor, I believe the witness was reading from
 3 the first paragraph of page 21.
 4 THE COURT: Yes, all right.
 5 THE WITNESS: I did not quite finish reading,
 6 sorry.
 7 THE COURT: You go right ahead.
 8 A. I said that: These polypeptides are uniquely
 9 characterized by being the product of microbial expression
 10 (e.g., by mammalian cells in culture) of an exogenous DNA
 11 sequence.
 12 I say that because at the time the only way we can
 13 characterize the product is by the way they were making,
 14 that's why this is described this way.
 15 Q. Did that product description change in later
 16 applications?
 17 A. Yes. As we have more information later, we can later
 18 on characterize the product that was produced so that then
 19 we, in the second application, we can look into the second
 20 application, brief summary, to see what we have there.
 21 Q. Let's see if we can find that page so that the Court
 22 and counsel can follow.
 23 Let me do this, Dr. Lin, let me ask you about the
 24 second patent application. Tell us first, you might want
 25 to refer to your summary chart, what was the further work