

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

AMGEN INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 F. HOFFMANN-LA ROCHE LTD, a )  
 Swiss Company, ROCHE DIAGNOSTICS )  
 GMBH, a German Company, and )  
 HOFFMANN LA ROCHE INC., a New )  
 Jersey Corporation, )  
 )  
 Defendants. )

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Civil Action No.: 1:05-cv-12237 WGY

**DECLARATION OF WILLIAM G. GAEDE, III, IN SUPPORT OF  
AMGEN INC.'S MOTION TO DEEM DOCUMENTS AND MEMORANDUM  
CONFIDENTIAL THAT DEFENDANTS' FILED WITH THEIR MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS IMPROPERLY WITHHELD ON GROUNDS OF  
PRIVILEGE**

I, William G. Gaede, III, declare as follows:

1. I am a partner with McDermott Will & Emery LLP and counsel for Amgen, Inc. in the above-captioned matter.

2. I am submitting this declaration in support of Amgen Inc.'s Motion to Deem Documents and Memorandum Confidential that Defendants' Filed with their Motion to Compel Production of Documents Improperly Withheld on Grounds of Privilege. I have knowledge of the following, and if called as a witness, could and would testify competently to the contents herein.

3. I have reviewed the documents served by the Defendants with their Motion to Compel Production of Documents Improperly Withheld on Grounds of Privilege and confirm that:

4. Appendix A is a chart compiled by Roche's counsel that contains summaries of excerpts from confidential deposition testimony as set forth in Appendix B.

5. Appendix B, Exhibit 1 contains confidential transcript pages from Michael F. Borun's May 17, 1988 deposition in the ITC action, *In re the Matter of Certain Recombinant Erythropoietin*, Inv. No. 337-TA-281 (1988) and was also produced and designated "Confidential" in another proceeding. Mr. Borun was and is an attorney for Amgen.

6. Appendix B, Exhibit 3 contains transcript pages from Michael F. Borun's November 23, 1999 deposition in *Amgen Inc., v. Hoescht Marion Roussel, Inc. and Transkaryotic Therapies, Inc.*, No. 97-10814-WGY. The transcript was designated "Confidential Pursuant to Protective Order" at the time of the deposition. The transcript was also produced in a subsequent litigation and was again designated "Confidential Subject to Protective Order." Mr. Borun was and is an attorney for Amgen.

7. Appendix B, Exhibit 6 contains transcript pages from Joan Christine Egrie's November 10, 1999 deposition in *Amgen Inc., v. Hoescht Marion Roussel, Inc. and Transkaryotic Therapies, Inc.*, No. 97-10814-WGY. The transcript was designated "Confidential Pursuant to Protective Order" at the time of the deposition. The transcript was also produced in subsequent litigation where it was again designated "Confidential Subject to Protective Order." Dr. Egrie was a scientist employed by Amgen.

8. Appendix B, Exhibit 7 contains transcript pages from Michael F. Borun's March 2, 2007 deposition in the present action and was "designated confidential as per section 5(c) of the Amended Protective Order" at the time of the deposition. Mr. Borun was and is an attorney for Amgen.

9. Appendix B, Exhibit 8 contains transcript pages from Thomas W. Strickland's September 13, 1999 deposition in *Amgen Inc., v. Hoescht Marion Roussel, Inc. and Transkaryotic Therapies, Inc.*, No. 97-10814-WGY. The transcript was designated "Confidential Pursuant to Protective Order" at the time of the deposition. The transcript was also produced in subsequent litigation where it was again designated "Confidential Subject to Protective Order." Dr. Strickland was and is a scientist employed by Amgen.

10. Appendix C contains selected pages from Amgen's privileged documents list which were designated "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER" in the ITC action, *In the Matter of Certain Products and Pharmaceutical Compositions Containing Recombinant Human Erythropoietin*, U.S. Int'l Trade Comm'n Inv. No. 337-TA-568.

11. The Confidential Memorandum in Support of Defendants' Motion to Compel Production of Documents Improperly Withheld on Grounds of Privilege contains excerpts from the confidential transcripts listed above.

I declare, under penalty of perjury, under the laws of the United States, that the foregoing is true and correct and that this Declaration was completed at Palo Alto, California this 2<sup>nd</sup> day of April 2007.

/s/ William G. Gaede, III  
William G. Gaede, III

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the Electronic Case Filing (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/ Michael R. Gottfried*  
Michael R. Gottfried