

**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.

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

**DECLARATION OF DR. JONATHAN LOEB IN SUPPORT OF  
AMGEN INC.'S OPPOSITION TO DEFENDANTS' MOTION TO COMPEL  
CONTINUED DEPOSITION OF DR. THOMAS STRICKLAND  
AND PRODUCTION OF RELATED DOCUMENTS**

I, Jonathan Loeb, declare as follows:

1. I am a partner with Day Casebeer Madrid & Batchelder LLP and counsel for Amgen Inc. in the above-captioned matter.

2. I am submitting this declaration in support of Amgen Inc.'s Memorandum in Support of Opposition to Defendant's Motion to Compel Continued Deposition of Dr. Thomas Strickland and Production of Related Documents. I have knowledge of the following, and if called as a witness, could and would testify competently to the contents herein.

3. Attached as Exhibit 1 is a true and correct copy of a letter from Deborah E. Fishman of Day Casebeer Madrid & Batchelder to Thomas F. Fleming of Kaye Scholer, dated March 6, 2007.

4. Attached as Exhibit 2 is a true and correct copy of a letter from Krista Rycroft of Kaye Scholer to Adam Arthur Bier of Day Casebeer Madrid & Batchelder, dated March 21, 2007.

5. Attached as Exhibit 3 is a true and correct copy of a letter from Deborah E. Fishman of Day Casebeer Madrid & Batchelder to Veronica Wiles of Kaye Scholer, dated March 8, 2007.

6. Attached as Exhibit 4 is a true and correct copy of a letter from Veronica J. Wiles of Kaye Scholer to Deborah E. Fishman of Day Casebeer Madrid & Batchelder, dated March 7, 2007.

7. Roche did not respond to the letter from Deborah E. Fishman of Day Casebeer Madrid & Batchelder to Veronica Wiles of Kaye Scholer, dated March 8, 2007 (Exhibit 3) stating that Dr. Strickland's deposition would be re-scheduled if Roche would not commit to completing it on March 9, including additional time that day, the following day, or the following Monday. Dr. Strickland, Amgen counsel Wendy Whiteford, and I arrived at the offices of Roche's counsel expecting the deposition to be completed as previously scheduled.

8. Dr. Strickland lives and works in Colorado, and had traveled to California for his deposition to accommodate Roche.

9. Attached as Exhibit 5 is a true and correct copy of Plaintiff Amgen Inc.'s Supplemental Disclosures Pursuant to FED. R. CIV. P. 26(A)(1), dated March 8, 2007.

10. Amgen produced in June 2006 Dr. Strickland's laboratory notebooks requested by Roche.

11. Attached as Exhibit 6 is a true and correct copy of selected pages from Plaintiff's Supplemental Response to First Set of Interrogatories (Nos. 1-12) that identify the documents reflecting Amgen's work on peg-EPO, dated February 10, 2007, in response to Roche interrogatory No. 7. Amgen's supplementation identified additional pages to those identified in its January 9, 2007, interrogatory response, which original response is reflected in the pages attached hereto.

12. Attached as Exhibit 7 is a true and correct copy of a letter from William G. Gaede, III of McDermott Will & Emery to Matthew McFarlane of Kaye Scholer, dated February 28, 2007.

13. Attached as Exhibit 8 is a true and correct copy of a letter from William G. Gaede, III of McDermott Will & Emery to Leora Ben-Ami of Kaye Scholer, dated February 27, 2007.

14. As of April 10, 2007, Roche had not accepted Amgen's offers to examine original laboratory notebooks at Amgen's facilities in Thousand Oaks, California.

15. Roche identified and Amgen made available 25 original laboratory notebooks at the deposition of Dr. Strickland.

16. I reviewed the transcript of Dr. Strickland's deposition and found that Roche's counsel asked questions on only six of the 25 laboratory notebooks that Roche identified for Amgen to bring to the deposition.

17. At the deposition of Dr. Thomas Strickland on March 9, 2007, I requested and received five breaks from the deposition. As shown by the deposition transcript, these breaks were taken at 10:21 A.M., 11:39 A.M., 2:58 P.M., 4:20 P.M., and 5:34 P.M. On most occasions, Roche counsel returned to the deposition room after Dr. Strickland and I had returned to the room.

18. Roche's counsel Dr. Jagoe requested about one and one half hours for the luncheon break. Dr. Strickland and I returned well in advance of the allotted time, and I requested that the deposition resume early in order to afford Roche adequate time with the witness.

19. Attached as Exhibit 9 is a true and correct copy of selected pages from the deposition transcript of Dr. Thomas Strickland, taken March 9, 2007.

20. Attached as Exhibit 10 is a true and correct copy of a letter from William G. Gaede, III of McDermott Will & Emery to Vladimir Drozdoff of Kaye Scholer, dated March 13, 2007.

21. Attached as Exhibit 11 is a true and correct copy of a letter from William G. Gaede, III of McDermott Will & Emery to Christopher Jagoe of Kaye Scholer, dated March 19, 2007.

22. Attached as Exhibit 12 is a true and correct copy of an e-mail exchange between Nicole A. Rizzo of Bromberg & Sunstein and William G. Gaede, III of McDermott, Will & Emery, dated March 28, 2007.

23. Copies of Dr. Strickland's May 19th declaration and "Amgen Inc. Response to FDA Questions – 8/10/88" that are requested in Roche's motion were produced to Roche in May 2006 at AM-ITC 00312260 – AM-ITC 000312271 and AM-ITC 00732263 – AM-ITC 00732750, respectively. Prior to Dr. Strickland's deposition, on March 1, 2007, Roche requested a first generation color photocopy of a specific page from Dr. Strickland's May 19th Declaration which contained a gel (AM-ITC 00312270). It is my understanding that Amgen produced the color photocopy of that page the next day. After a thorough search, it is my understanding that Amgen has searched for and has not been able to locate the original version of the document entitled "Amgen Inc. Response to FDA Questions – 8/10/88," and thus a first generation color copy of the document is not available.

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 Cupertino, California this 11th day of April 2007.

/s/ Jonathan Loeb

Jonathan Loeb, Ph.D., J.D.

#### **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