

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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. 05-12237 WGY

U.S. District Judge Young

**DEFENDANTS' RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT THAT
CLAIM 10 OF THE '933 PATENT IS INVALID ON THE GROUNDS OF FAILURE
TO COMPLY WITH CLAIM DIFFERENTIATION UNDER § 112, ¶ 4**

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche, Inc. ("Roche") submit the following statement of undisputed material facts pursuant to LR 56.1 in support of their motion for summary judgment that claim 10 of U.S. Patent No. 5,547,933 (hereinafter "the '933 patent") is invalid on the grounds of failure to comply with claim differentiation under 35 U.S.C. § 112, ¶ 4.

1. Claim 9 of the '933 patent reads as follows:

"A pharmaceutical composition comprising an effective amount a glycoprotein product effective for erythropoietin therapy according to claim 1, 2, 3, 4, 5 or 6 and a pharmaceutically acceptable diluent, adjuvant or carrier."

(Suh Decl., Ex. A, '933, column 39, ll.1-4)

2. On April 17, 2007, this Court tentatively held that "a pharmaceutical composition comprising," as recited in claim 9, means "a composition suitable for administration

to humans containing a diluent, adjuvant or carrier.” (Suh Decl., Ex. B, Claim Construction Hearing, April 17, 2007, pgs. 76:24-77:4. (emphasis added).

3. Claim 10 of the ‘933 patent, which is depends upon claim 9, reads as follows:

“A method of providing erythropoietin therapy to a mammal comprising administering an effective amount of a pharmaceutical composition of claim 9.”

(Suh Decl., Ex. A ‘933, column 39, ll. 5-7) (emphasis added)

Dated: June 11, 2007
Boston, Massachusetts

Respectfully submitted,
F. HOFFMANN-LA ROCHE LTD,
ROCHE DIAGNOSTICS GMBH, and
HOFFMANN-LA ROCHE INC.

By its attorneys,

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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/ Keith E. Toms
Keith E. Toms