

**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

**DECLARATION OF HOWARD S. SUH IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT OF CLAIM 1 OF
PATENT NO. 5,955,422 AND CLAIMS 9 AND 12 OF PATENT NO. 5,547,933**

Lee Carl Bromberg (BBO# 058480)
Julia Huston (BBO# 562160)
Keith E. Toms (BBO# 663369)
Nicole A. Rizzo (BBO# 663853)
BROMBERG & SUNSTEIN LLP
125 Summer Street
Boston, MA 02110
Tel. (617) 443-9292

Leora Ben-Ami (*pro hac vice*)
Mark S. Popofsky (*pro hac vice*)
Patricia A. Carson (*pro hac vice*)
Thomas F. Fleming (*pro hac vice*)
Howard S. Suh (*pro hac vice*)
Peter Fratangelo (BBO# 639775)
Krista M. Rycroft (*pro hac vice*)
KAYE SCHOLER LLP
425 Park Avenue
New York, New York 10022
Tel. (212) 836-8000

*Counsel for Defendants,
F. HOFFMANN-LA ROCHE LTD,
ROCHE DIAGNOSTICS GmbH, and
HOFFMANN-LA ROCHE INC.*

Dated: June 11, 2007

I, Howard S. Suh, hereby declare under penalty of perjury that:

1. I am an attorney admitted to the Bar of the State of New York and am counsel in the law firm of Kaye Scholer LLP, counsel for Defendants in the above captioned case.
2. I make this declaration in support of Defendants' Motion for Summary Judgment of Non-Infringement of Claim 1 of Patent No. 5,955,422 and claims 9 and 12 of Patent No. 5,547,933 and the accompanying Rule 56.1 Statement Of Undisputed Material Facts.
3. Attached hereto as Exhibit A is a true and correct copy of U.S. Patent No. 5,955,422.
4. Attached hereto as Exhibit B is a true and correct copy of U.S. Patent No. 5,547,933.
5. Attached hereto as Exhibit C is a true and correct copy of an excerpt from the April 17, 2007 Markman Hearing.
6. Attached hereto as Exhibit D is a true and correct copy of excerpts from Plaintiff's Supplemental Response to Defendants' First Set of Interrogatories (Nos. 1-12).
7. Exhibit E is intentionally left blank.
8. Attached hereto as Exhibit F is a true and correct copy of excerpts from the Expert Report of Harvey F. Lodish, Ph.D Regarding Infringement dated April 6, 2007.
9. Exhibit G is intentionally left blank.
10. Exhibit H is intentionally left blank.
11. Attached hereto as Exhibit I is a true and correct copy of MPEP §2173.05(h) (8th ed. Rev. 5, Aug. 2006)).
12. Attached hereto as Exhibit J is a true and correct copy of U.S. App. Ser. No. 08/100,197 File History, Paper 18, 12/20/93 Amendment.
13. Attached hereto as Exhibit K is a true and correct copy of U.S. App. Ser. No. 08/100,197 File History, Paper 17, Examiner Interview Summary Record.

14. Attached hereto as Exhibit L is a true and correct copy of U.S. App. Ser. No. 08/100,197
File History, Paper 23, 12/1/94 Request for Reconsideration.

Dated: June 11, 2007

Respectfully submitted,

/s/ Howard Suh

Howard Suh

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/ Nicole A. Rizzo

Nicole A. Rizzo

03099/00501 684828.1