

**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 KRISTA M. RYCROFT IN SUPPORT OF  
ROCHE'S MOTION FOR SUMMARY JUDGMENT THAT  
CLAIM 1 OF THE '422 PATENT IS INVALID UNDER 35 U.S.C. § 112**

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

Dated: June 11, 2007

I, Krista M. Rycroft, hereby declare under penalty of perjury that:

1. I am an attorney admitted to the Bar of the State of New York and am an associate in the law firm of Kaye Scholer LLP, counsel for Defendants in the above-captioned case.
2. I make this declaration in support of Roche's Motion for Summary Judgment That Claim 1 of the '422 Patent Is Invalid Under 35 U.S.C. §112 and the accompanying Rule 56.1 Statement Of Undisputed Material Facts.
3. Exhibit 1 is a true and correct copy of U.S. Patent No. 5,955,422.
4. Exhibit 2 is a true and correct copy of Amgen Inc.'s Response to Defendants' Claim Construction Brief filed March 19, 2007 (Docket No. 323).
5. Exhibit 3 is a true and correct copy of excerpts from the April 17, 2007 *Markman* Hearing.
6. Exhibit 4 is a true and correct copy of Amgen Inc.'s Post-Hearing Memorandum In Support of Its Fed. R. Civ. P. 52(c) Motion That '080 Claims 2-4 Are Infringed Under The Doctrine Of Equivalents filed August 18, 2003 (AM-ITC 00852559-580).
7. Exhibit 5 is a true and correct copy of Recny *et al.*, "Structural Characterization of Natural Human Urinary and Recombinant DNA-derived Erythropoietin," *J. Biol. Chem.*, 262(35); 17156-17163 (1987).
8. Exhibit 6 is a true and correct copy of excerpts from the Expert Statement of Harvey F. Lodish, Ph.D. dated December 20, 1999, submitted in *Amgen v. HMR/TKT*, 97-10814-WGY (D. Mass.).

9. Exhibit 7 is a true and correct copy of an excerpt from Amgen Inc.'s September 27, 1985 Notice of Claimed Investigational Exemption for Recombinant-Human Erythropoietin (including AM-ITC 00595236-39, AM-ITC00595290-293, AM-ITC 00596039-042).

10. Exhibit 8 is a true and correct copy of Lin *et al.*, "Cloning and expression of the human erythropoietin gene," *PNAS*, 82; 7580-7584 (1985).

11. Exhibit 9 is a true and correct copy of U.S. App. Ser. No. 06/675,298 File History, Paper 12, Exhibit 8 to the 10/2/86 Amendment and Reply.

12. Exhibit 10 is a true and correct copy of U.S. App. Ser. No. 06/675,298 File History, Paper 12, 10/2/86 Amendment and Reply.

13. Exhibit 11 is a true and correct copy of the File History of U.S. Patent 5,955,422, Paper 2, 11/6/90 Preliminary Amendment (AM-ITC 00899076-87).

14. Exhibit 12 is a true and correct copy of the File History of U.S. Patent 5,955,422, Paper 33, 4/28/99 Amendment (AM-ITC 00899470-75).

15. Exhibit 13 is a true and correct copy of Lai *et al.*, "Structural Characterization of Human Erythropoietin," *J. Biol. Chem.*, 261(7); 3116-3121 (1986).

16. Exhibit 14 is a true and correct copy of excerpts from the Declaration of Harvey F. Lodish, Ph.D. In Support of Amgen Inc.'s Reply to Defendants' Claim Construction Brief, filed March 19, 2007 (Docket No. 323).

17. Exhibit 15 is a true and correct copy of excerpts from the Supplemental Expert Report of Harvey F. Lodish, Ph.D dated June 4, 2007.

18. Exhibit 16 is a true and correct copy of MPEP § 2173.05(d) (8th ed. Rev. 5, Aug. 2006)).

19. Exhibit 17 is a true and correct copy of MPEP §706.03(d) (8th ed. Rev. 5, Aug. 2006).

Dated: June 11, 2007

Respectfully submitted,

/s/ Krista M. Rycroft  
Krista M. Rycroft

### **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

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