

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMGEN INC.,)
)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION No.: 05-CV-12237WGY
)
 F. HOFFMANN-LA ROCHE LTD;)
 ROCHE DIAGNOSTICS GmbH; and)
 HOFFMANN-LA ROCHE INC.)
)
 Defendants.)

**DECLARATION OF KIMBERLY J. SELUGA IN SUPPORT OF DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT THAT THE CLAIMS OF PATENTS-IN-SUIT
ARE INVALID FOR DOUBLE PATENTING OVER AMGEN ‘016 PATENT**

I, Kimberly J. Seluga, declare under penalty of perjury that:

1. I am an attorney at the law firm of Bromberg & Sunstein LLP and am admitted to the Bar of the Commonwealth of Massachusetts. I am counsel for Defendants in the above-referenced case.

2. I make this declaration in support of the Defendants’ Motion for Summary Judgment that the Claims of Patents-in-Suit are Invalid for Double Patenting over Amgen ‘016 Patent.

3. Attached hereto as Exhibit A is a true and correct copy of U.S. Patent No. 5,441,868 (“the ‘868 patent”).

4. Attached hereto as Exhibit B is a true and correct copy of U.S. Patent No. 5,618,698 (“the ‘698 patent”).

5. Attached hereto as Exhibit C is a true and correct copy of U.S. Patent No. 5,756,349 (“the ‘349 patent”).

6. Attached hereto as Exhibit D is a true and correct copy of U.S. Patent No. 5,955,422 (“the ‘422 patent”).

7. Attached hereto as Exhibit E is a true and correct copy of U.S. Patent No. 5,547,933 (“the ‘933 patent”).

8. Attached hereto as Exhibit F is a true and correct copy of U.S. Patent No. 4,667,016 (“the ‘016 patent”).

9. Attached hereto as Exhibit G is a true and correct copy of U.S. Patent No. U.S. Patent No. 4,703,008 (“the ‘008 patent”).

10. Attached hereto as Exhibit H is a true and correct copy of *Amgen Inc. v. Chugai Pharmaceutical Co. Ltd.*, 927 F.2d 1200, 18 U.S.P.Q.2d 1016 (Fed. Cir. 1991).

11. Attached hereto as Exhibit I is a true and correct copy of the Brief of Senior Party Lin, Interference No. 102,097.

12. Attached hereto as Exhibit J is a true and correct copy of *Fritsch v. Lin*, 21 U.S.P.Q.2d 1739, 1991 WL 332571 (BPAI 1991) (Interference No. 102,097).

13. Attached hereto as Exhibit K are true and correct excerpts of the depositions of Fu-Kuen Lin in: *Fritsch v. Lin*, at pages 205-210, 216, 217, 219, and 220, dated April 9, 1991; *Amgen v. Chugai*, at pages 107 and 108, dated August 15, 1989; and *Amgen Inc. v. F. Hoffmann-La Roche Ltd.*, at pages 62-65 and 365 to 368, dated March 28-29, 2007.

14. Attached hereto as Exhibit L is a true and correct copy of the ‘179 File History, Paper 33, 1/31/94 Amendment.

15. Attached hereto as Exhibit M is a true and correct copy of the ‘178 File History, Paper 19, 1/11/90 Amendment.

16. Attached hereto as Exhibit N is a true and correct copy of the Initial Expert Report of Harvey F. Lodish, Ph.D., dated August 27, 2004.

17. Attached hereto as Exhibit O is a true and correct excerpt of the Manual of Patent Examining Procedure § 804 (8th ed., Rev. 5, Aug. 2006).

18. Attached hereto as Exhibit P is a true and correct copy of 35 U.S.C.A. § 116 (Thomson/West 2007).

19. Attached hereto as Exhibit Q is a true and correct copy of the '179 File History, Paper 34, 2/15/94 Office Action.

20. Attached hereto as Exhibit R is a true and correct excerpt of the deposition testimony of Dr. Julian Davies in *In the Matter of Certain Recombinant Erythropoietin* (Investigation No. 337-TA-281), at pages 523-24, dated June 21, 1988.

21. Attached hereto as Exhibit S is a true and correct excerpt of the Expert Report of Professor Randolph Wall, at pages 36-37, 42, and 47, dated November 9, 2000.

22. Attached hereto as Exhibit T is a true and correct copy of the '178 File History, Paper 34, 12/29/93 Office Action.

Executed this 7th day of June 2007 at Boston, Massachusetts.

/s/ Kimberly J. Seluga
Kimberly J. Seluga

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 June 12, 2007.

/s/ Nicole A. Rizzo
Nicole A. Rizzo

03099/00501 681092.1

List of Exhibits

- Exhibit A U.S. Patent No. 5,441,868
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