

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

_____	)	
AMGEN, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	C.A. No. 05-12237-WGY
F. HOFFMAN-LA ROCHE LTD., a Swiss	)	
Company, ROCHE DIAGNOSTICS GmbH, a	)	
German Company, and HOFFMAN-LA ROCHE	)	
INC., a New Jersey Corporation	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF JAMES M. FRASER IN SUPPORT  
OF AMGEN'S MOTION FOR SUMMARY JUDGMENT ON  
ROCHE'S ANTITRUST AND STATE LAW COUNTERCLAIMS**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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AMGEN, INC.		)	
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Plaintiff,		)	
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v.		)	
		)	C.A. No. 05-12237-WGY
F. HOFFMAN-LA ROCHE LTD., a Swiss		)	
Company, ROCHE DIAGNOSTICS GmbH, a		)	
German Company, and HOFFMAN-LA ROCHE		)	
INC., a New Jersey Corporation		)	
		)	
Defendants.		)	
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**DECLARATION OF JAMES M. FRASER IN SUPPORT  
OF AMGEN’S MOTION FOR SUMMARY JUDGMENT ON  
ROCHE’S ANTITRUST AND STATE LAW COUNTERCLAIMS**

I, James M. Fraser, hereby declare under penalty of perjury that I am an attorney admitted to practice in the Commonwealth of Massachusetts, and am associated with the law firm of McDermott Will & Emery LLP, counsel for Plaintiff Amgen, Inc. in the above-captioned case. I submit this affidavit in support of Amgen’s Motion for Summary Judgment on Defendants’ Antitrust and State Law Counterclaims. Attached hereto are true and correct copies of exhibits cited in the Memorandum of Law in Support of Amgen’s Motion for Summary Judgment and in Amgen’s Statement of Undisputed Material Facts Pursuant to Local Rule 56.1.

1. Exhibit 1 hereto is a true and correct copy of the March 30, 2007 Memorandum and Order in the above-captioned case.

2. Exhibit 2 hereto is a true and correct copy of excerpts from Defendant's Responses and Objections to Plaintiff Amgen Inc.'s Fourth Set of Interrogatories (Nos. 27-38) in the above-captioned case.

3. Exhibit 3 hereto is a true and correct copy of Defendants' Surreply to Amgen's Reply Brief in Support of its Motion to Dismiss Roche's Counterclaim Counts I-IX and XII in the above-captioned case.

4. Exhibit 4 hereto is a true and correct copy of the Declaration of Mats Wahlstrom, President of Fresenius Medical Care's services division in North America (May 31, 2007).

5. Exhibit 5 hereto is a true and correct copy of excerpts from the Expert Report of David J. Teece, Ph.D. (Amgen's economics expert) in the above-captioned case.

6. Exhibit 6 hereto is a true and correct copy of Exhibit 2 from the Expert Report of David J. Teece, Ph.D. (Amgen's economics expert) in the above-captioned case.

7. Exhibit 7 hereto is a true and correct copy of Exhibit 3 from the Expert Report of David J. Teece, Ph.D. (Amgen's economics expert) in the above-captioned case.

8. Exhibit 8 hereto is a true and correct copy of Exhibit 4 from the Expert Report of David J. Teece, Ph.D. (Amgen's economics expert) in the above-captioned case.

9. Exhibit 9 hereto is a true and correct copy of Exhibit 5 from the Expert Report of David J. Teece, Ph.D. (Amgen's economics expert) in the above-captioned case.

10. Exhibit 10 hereto is a true and correct copy of Exhibit 9 from the Expert Report of David J. Teece, Ph.D. (Amgen's economics expert) in the above-captioned case.

11. Exhibit 11 hereto is a true and correct copy of Exhibit 14 from the Expert Report of David J. Teece, Ph.D. (Amgen's economics expert) in the above-captioned case.

12. Exhibit 12 hereto is a true and correct copy of excerpts from the Expert Report of Professor Einer Elhauge (Roche's economics expert) in the above-captioned case.

13. Exhibit 13 hereto is a true and correct copy of excerpts from the Report of Lauren J. Stiroh (Roche's damages expert) in the above-captioned case.

14. Exhibit 14 hereto is a true and correct copy of excerpts from the deposition of George Abercrombie (Roche's President and CEO in the United States) in the above-captioned case.

15. Exhibit 15 hereto is a true and correct copy of excerpts from the deposition of Sonders Beimfohr (Roche's Director of Strategic Pricing, Renal Segment) in the above-captioned case.

16. Exhibit 16 hereto is a true and correct copy of excerpts from the deposition of Suzann Duncan (Roche's Product Director, Commercial Operations) in the above-captioned case.

17. Exhibit 17 hereto is a true and correct copy of excerpts from the deposition of Einer Elhauge (Roche's economics expert) in the above-captioned case.

18. Exhibit 18 hereto is a true and correct copy of excerpts from the deposition of Chrys Kokino (Roche's Vice President of Anemia Products) in the above-captioned case.

19. Exhibit 19 hereto is a true and correct copy of excerpts from the deposition of Fred Manak (Amgen's Executive Director of Trade, Pricing, and Contract Management) in the above-captioned case.

20. Exhibit 20 hereto is a true and correct copy of excerpts from deposition of Robert J. McGorty (Fresenius Medical Service's Vice President of Finance and Administration) in the above-captioned case.

21. Exhibit 21 hereto is a true and correct copy of excerpts from the deposition of Anthony Messina (Executive Director, Renal Services for St. Joseph Hospital and Board Member of Renal Purchasing Group) in the above-captioned case.

22. Exhibit 22 hereto is a true and correct copy of excerpts from the deposition of Maureen Michael (Executive Director, Central Florida Kidney Centers) in the above-captioned case.

23. Exhibit 23 hereto is a true and correct copy of excerpts from the deposition of Leslie Mirani (Amgen's Vice President, Nephrology Sales) in the above-captioned case.

24. Exhibit 24 hereto is a true and correct copy of excerpts from the deposition of Tracey Mooney (CFO, Independent Dialysis Foundation) in the above-captioned case.

25. Exhibit 25 hereto is a true and correct copy of excerpts from the deposition of Barbara Senich (Roche's Vice President of Sales and Marketing Services) in the above-captioned case.

26. Exhibit 26 hereto is a true and correct copy of excerpts from the deposition of Lauren J. Stiroh (Roche's damages expert) in the above-captioned case.

27. Exhibit 27 hereto is a true and correct copy of an excerpt of Exhibit 2 from the deposition of Sonders Beimfohr (Roche's Director of Strategic Pricing, Renal Segment) in the above-captioned case.

28. Exhibit 28 hereto is a true and correct copy of an excerpt of Exhibit 4 from the deposition of Einer Elhauge (Roche's economics expert) in the above-captioned case.

29. Exhibit 29 hereto is a true and correct copy of Exhibit 9 from the deposition of Einer Elhauge (Roche's economics expert) in the above-captioned case.

30. Exhibit 30 is a true and correct copy of an excerpt of Exhibit 5 from the deposition of John Keefe (Roche's ESRD Product Director) in the above-captioned case.

31. Exhibit 31 hereto is a true and correct copy of an excerpt of Exhibit 23 from the deposition of Helen Torley, M.D. (Amgen's Vice President and General Manager, Nephrology Division) in the above-captioned case.

32. Exhibit 32 hereto is a true and correct copy of an excerpt of a document Bates stamped R000261907 to R000261941 produced in the above-captioned case.

33. Exhibit 33 hereto is a true and correct copy of an excerpt of a document Bates stamped R003852422 to R003852455 produced in the above-captioned case.

34. Exhibit 34 hereto is a true and correct copy of an excerpt of a document Bates stamped R000185374 to R000185445 produced in the above-captioned case.

35. Exhibit 35 hereto is a true and correct copy of an excerpt of a document Bates stamped R005233499 to R005233551 produced in the above-captioned case.

36. Exhibit 36 hereto is a true and correct copy of an excerpt of a document Bates stamped R003787786 to R003787900 produced in the above-captioned case.

37. Exhibit 37 hereto is a true and correct copy of an excerpt of a document Bates stamped R10-004974841 to R10-004975230 produced in the above-captioned case.

38. Exhibit 38 hereto is a true and correct copy of an excerpt of a document Bates stamped AM47 092831 to AM47 092892 produced in the above-captioned case.

39. Exhibit 39 hereto is a true and correct copy of a document Bates stamped FMCNA 002472 produced in the above-captioned case.

40. Exhibit 40 hereto is a true and correct copy of an E-mail from Alan Rosenberg, Smith Barney, to Maureen Michael (Mar. 21, 2007) produced in the above-captioned case..

41. Exhibit 41 hereto is a true and correct copy of a Consulting Agreement between Maureen Michael and Roche Laboratories Inc. dated December 6, 2006 produced in the above-captioned case.

42. Exhibit 42 hereto is a true and correct copy of E-mail from Mike Cooper to Anthony Messana and Maureen Michael (Dec. 13, 2006) produced in the above-captioned case.

43. Exhibit 43 hereto is a true and correct copy of an excerpt of a Transcript of Fresenius Medical Care's Q4 2006 Earnings Conference Call (Feb. 22, 2007).

44. Exhibit 44 hereto is a true and correct copy of a Roche press release entitled "Roche Receives Approvable Letter for Mircera in the United States" (May 18, 2007).

Dated: June 15, 2007

*/s/ James M. Fraser*  
\_\_\_\_\_  
James M. Fraser

**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 and paper copies will be sent to those indicated as non-registered participants.

*/s/ Michael R. Gottfried* \_\_\_\_\_

Michael R. Gottfried