

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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AMGEN INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 F. HOFFMANN-LA ROCHE LTD, )  
 ROCHE DIAGNOSTICS GMBH, )  
 and HOFFMANN-LA ROCHE INC., )  
 )  
 Defendants. )

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CIVIL ACTION No.: 05-CV-12237WGY

**DECLARATION OF HOWARD S. SUH IN SUPPORT OF ROCHE’S MOTION  
FOR SUMMARY JUDGMENT THAT CLAIM 7 OF PATENT NO. 5,756,349 IS  
INVALID UNDER 35 U.S.C. § 112 AND IS NOT INFRINGED**

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

Dated: June 21, 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 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 7 of U.S. Patent No. 5,756,349 Is Invalid Under 35 U.S.C. §112 And Is Not Infringed, and the accompanying Rule 56.1 separate Statement of Undisputed Material Facts.

3. Exhibit A is a true and correct copy of excerpted pages from Plaintiff's Supplemental Response to Defendants' First set of Interrogatories (Nos. 1-12) at 3, 21.

4. Exhibit B is a true and correct copy of U.S. Patent No. 5,756,349.

5. Exhibit C is a true and correct copy of excerpts from the March 17, 2007 Markman Hearing Transcript at 27, 39.

6. Exhibit D is a true and correct copy of excerpts from the March 28, 2007 Deposition Transcript of Fu-Kuen Lin at 73-74.

7. Exhibit E is a true and correct copy of excerpts from the February 14, 2007 Deposition Transcript of Eugene Goldwasser at 49-54, 56.

8. Exhibit F is a true and correct copy of excerpts from the May 11, 2007 Rebuttal Expert Statement of Ronald W. McLawhon, M.D., Ph.D., at ¶¶ 34, 51, 75.

9. Exhibit G is a true and correct copy of excerpts from the May 11, 2007 Rebuttal Expert Statement of Eugene Goldwasser, Ph.D., at ¶¶ 48, 120.

10. Exhibit H is a true and correct copy of excerpts from the April 30, 2007 Expert Report of Ronald W. McLawhon, M.D., Ph.D., at ¶¶ 12-24, 32.

11. Exhibit I is a true and correct copy of excerpts from the March 27, 2007 Deposition Transcript of Joan Egrie at 45-46, 52, 54-57, 60-61, 64-65, 134-37, 170-71, 182-85, 194.

12. Exhibit J is a true and correct copy of an excerpt from the May 17, 2007 Deposition Transcript of Ronald W. McLawhon at 131, 133, 151-52, 220-21.

13. Exhibit K is a true and correct copy of AM-ITC 01006801-05.

14. Exhibit L is a true and correct copy of Sherwood, J.B., & Goldwasser, E. (1979) *Blood* 54, 885-93.

15. Exhibit M is a true and correct copy of AM-ITC 00156690-718.

16. Exhibit N is a true and correct copy of excerpts from the May 31, 2007 deposition of Eugene Goldwasser at 177-178.

17. Exhibit O is a true and correct copy of AM-ITC-00558658-65.

18. Exhibit P is a true and correct copy of Annable L., *et al.* (1972) *Bull. Wld. Hlth. Org.* 47, 99-112.

19. Exhibit Q is a true and correct copy of UCH000005950-51.

20. Exhibit R is a true and correct copy of AM-ITC 00134725.

21. Exhibit S is a true and correct copy of AM-ITC 00061675-706.

22. Exhibit T is a true and correct copy of AM-ITC 00558618-20.

23. Exhibit U is a true and correct copy of excerpts from the May 1, 2007 Supplemental Expert Report of Dr. Thomas Kadesch at ¶¶ 46, 48.

24. Exhibit V is a true and correct copy of an excerpt from the June 4, 2007 Supplemental Expert Report of Harvey F. Lodish, Ph.D at ¶ 50.

25. Exhibit W is a true and correct copy of AM-ITC 00953207.

- 26. Exhibit X is a true and correct copy of AM-ITC 00953598.
- 27. Exhibit Y is a true and correct copy of AM-ITC 00953638.
- 28. Exhibit Z is a true and correct copy of AM-ITC 00550541-44.
- 29. Exhibit AA is a true and correct copy of excerpts from the June 16, 2007

Deposition Transcript of Paul Kincade, Ph.D. at 280-81.

30. Exhibit BB is a true and correct copy of excerpts from the Expert Statement of Richard D. Kolodner, Ph.D. at ¶¶ 12-13, 18-19, 22.

31. Exhibit CC is a true and correct copy of AM-ITC 00550777-82.

32. Exhibit DD is a true and correct copy of AM-ITC 00550986-1044.

Dated: June 21, 2007

Respectfully submitted,

/s/ Howard S. Suh  
Howard S. 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 June 22, 2007.

/s/ Kimberly J. Seluga  
Kimberly J. Seluga

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