



For the reasons set forth in its supporting Memorandum, filed herewith, Plaintiff Amgen Inc. (“Amgen”) respectfully submits this Motion For Summary Judgment of No Inequitable Conduct. In particular, Amgen respectfully requests that the Court grant summary judgment in Amgen’s favor that:

- (1) Amgen did not commit inequitable conduct by omitting material information relating to purported similarities between r-EPO and uEPO during the prosecution of U.S. Patent No. 5,547,933 (“933 Patent”), as alleged in paragraphs 74-88 of Defendants’ First Amended Answer and Counterclaims, filed March 30, 2007 (“Amended Answer”), on the grounds set forth in the accompanying Memorandum, including that the allegedly withheld information was disclosed to the Patent Office, was not material and/or was cumulative of information already before the Patent Office;
- (2) Amgen did not commit inequitable conduct in making legal arguments or alleged material omissions regarding purported double patenting during the prosecution of the ‘179 application, as alleged in paragraphs 43-53 of Defendants’ Amended Answer, on the grounds set forth in the accompanying Memorandum, including that Amgen’s legal arguments were correct, and the alleged omissions are not material.
- (3) Amgen did not commit inequitable conduct during the prosecution of the ‘178 and ‘179 applications, by withholding the fact of or bases for the examiners’ rejections of any substantially similar claims in the ‘178 and ‘179 applications, as alleged in paragraphs 54-73 of Defendants’ Amended Answer, on the grounds set forth in the accompanying Memorandum, including that all previous rejections and the bases therefor were before the single examiner who became responsible for the examination of both applications prior to the issuance of the patents-in-suit.

#### **CERTIFICATE PURSUANT TO LOCAL RULE 7.1**

I certify that counsel for the parties have conferred in an attempt to resolve or narrow the issues presented by Amgen Inc.’s Motion For Summary Judgment of No Inequitable Conduct. No agreement could be reached.

/s/ Michael R. Gottfried  
Michael R. Gottfried

***Request for Oral Argument***

Amgen respectfully requests that the Court hear oral argument regarding this motion.

Respectfully Submitted,

AMGEN INC.,  
By its attorneys,

*/s/ Michael R. Gottfried*

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**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 on-registered participants.

*/s/ Michael R. Gottfried*  
Michael R. Gottfried