

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN INC.,)	
)	
Plaintiff,)	
)	Civil Action No.: 05-12237 WGY
v.)	
)	
F. HOFFMANN-LAROCHE)	
LTD., a Swiss Company, ROCHE)	
DIAGNOSTICS GmbH, a German)	
Company and HOFFMANN LAROCHE)	
INC., a New Jersey Corporation,)	
)	
Defendants.)	
_____)	

**DECLARATION OF CRAIG H. CASEBEER IN SUPPORT OF
AMGEN INC.'S MEMORANDUM TO ITS MOTION FOR
SUMMARY JUDGMENT OF NO INEQUITABLE CONDUCT**

I, Craig Casebeer, declare as follows:

1. I am an attorney at the law firm of Day Casebeer Madrid & Batchelder LLP, counsel for plaintiff Amgen Inc. I am admitted to practice law before this Court (*pro hac vice*) and all of the Courts of the State of California.

2. I make this declaration of my own personal knowledge. If called to testify as to the truth of the matters stated herein, I could and would testify competently.

3. Attached hereto as Exhibit 1 is a true and correct copy of Egrie, et al., “Characterization and Biological Effects of Recombinant Human Erythropoietin,” *Immunobiology* 172: 213-224 (1986), bearing bates AM-ITC 00338629-640.

4. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from Joan Egrie’s Input Lab Notebook, bearing bates AM-ITC 01005096-123.

5. Attached hereto as Exhibit 3 is a true and correct copy of Browne, et al., “Erythropoietin: Gene Cloning, Protein Structure, and Biological Properties,” *Cold Spring Harbor Symposia on Quantitative Biology*, pages 693-702 (1986), bearing bates AM-ITC 00461052-061.

6. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from Section 9 in Amgen’s Product License Agreement, bearing bates AM-ITC 00092850-71 and AM-ITC 00092980-81.

7. Attached hereto as Exhibit 5 is a true and correct copy of the Declaration of Thomas W. Strickland, filed on February 13, 1992, bearing bates AM67 018641-657.

8. Attached hereto as Exhibit 6 is a true and correct copy of Declaration of Thomas W. Strickland, filed on May 19, 1994, bearing bates AM-ITC 00312260-271.

9. Attached hereto as Exhibit 7 is a true and correct copy of Interferences 102,096, 102,097, 102,334, *Fritsch v. Lin*, Notice (IV) by Lin Under 37 CFR 1.682(a), filed April 29, 1991, bearing bates AM-ITC 00336474-478.

10. Attached hereto as Exhibit 8 is a true and correct copy of Joan Egrie’s

Declaration, filed on 3/18/91, in *Fritsch v. Lin* Interference 102,334, bearing bates AM-ITC 01001744-76.

11. Attached hereto as Exhibit 9 is a true and correct copy of excerpts from Lab Notebook 633, bearing bates AM-ITC 00945663-673.

12. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from Lab Notebook 723, bearing bates AM-ITC 00951137-165.

13. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from Lab Notebook 315, bearing bates AM-ITC 00951166-178.

14. Attached hereto as Exhibit 12 is a true and correct copy of excerpts from Lab Notebook 717, bearing bates AM-ITC 00996341-364.

15. Attached hereto as Exhibit 13 is a true and correct copy of '874 File History, 2/16/95 Applicant's Amendment and Request for Reconsideration Under 37 C.F.R. §§ 1.111 and 1.1115, bearing bates AM-ITC 00460842-853.

16. Attached hereto as Exhibit 14 is a true and correct copy of the Declaration of Richard Cummings, Ph.D., filed in the Appeal Proceedings Against EP 148 605 of Kirin-Amgen, bearing bates AM-ITC 00460858-884.

17. Attached hereto as Exhibit 15 is a true and correct copy of a letter from K. Peterson to the Commissioner of Patents and Trademark, dated April 16, 1997, bearing bates AM-ITC 00950016-017.

18. Attached hereto as Exhibit 16 is a true and correct copy of Interference No. 102,334, *Fritsch v. Lin*, Reply Brief for Party Fritsch, filed August 12, 1991, bearing bates AM-ITC 00343397-447.

19. Attached hereto as Exhibit 17 is a true and correct copy of the Interference 102,334, *Fritsch v. Lin*, Oppositions of Lin to 37 CFR §§ 1.633 and 1.635 Motions by Fritsch et al, bearing bates AM-ITC 00339491-511.

20. Attached hereto as Exhibit 18 is a true and correct copy of the '179 File History, Paper No. 43, 10/7/94 Applicant's Amendment and Remarks Under 37 C.F.R. §§1.111 and

1.115, bearing bates AM-ITC 00953691-701.

21. Attached hereto as Exhibit 19 is a true and correct copy of excerpts from the Expert Report of Michael Sofocleous, served on April 6, 2007.

22. Attached hereto as Exhibit 20 is a true and correct copy of '178 File History, Paper No. 21, 2/9/90 Examiner's Interview Summary, bearing bates AM-ITC 00941225-227.

23. Attached hereto as Exhibit 21 is a true and correct copy of Interference No. 102,097, *Fritsch v. Lin*, Brief for Senior Party Lin, bearing bates AM-ITC 00337649-715.

24. Attached hereto as Exhibit 22 is a true and correct copy of Lin Oppositions to Interference Nos. 102,096 and 102,097, *Fritsch v. Lin*, Opposition G – To Motion to Combine Interference No. 102,097 with the Instant Interference, bearing bates AM-ITC 00332107-110.

25. Attached hereto as Exhibit 23 is a true and correct copy of '298 File History, Paper No. 8, 6/16/86 Examiner's Office Action, bearing bates AM-ITC 00952500-521.

26. Attached hereto as Exhibit 24 is a true and correct copy of the '197 File History, Paper No. 35, 4/26/99 Terminal Disclaimer for '933, bearing bates AM-ITC 00943727-728.

27. Attached hereto as Exhibit 25 is a true and correct copy of the '178 File History, Paper No. 39, 9/7/94 Interview Summary, bearing bates AM-ITC 00941497-498.

28. Attached hereto as Exhibit 26 is a true and correct copy of '179 File History, Paper No. 42, 9/7/94 Examiner Interview Summary Record, bearing bates AM-ITC 000425.

29. Attached hereto as Exhibit 27 is a true and correct copy of '298 File History, 3/7/85 International Search Report, bearing bates AM-ITC 00952465-467.

30. Attached hereto as Exhibit 28 is a true and correct copy of '874 File History, Paper No. 36, 4/8/94 Information Disclosure Statement, bearing bates AM-ITC 00941422-449.

31. Attached hereto as Exhibit 29 is a true and correct copy of '179 File History, 1/3/94 Information Disclosure Statement, bearing bates AM-ITC 00953609-635.

32. Attached hereto as Exhibit 30 is a true and correct copy of '179 File History, Paper No. 41, 8/11/94 Examiner's Office Action, bearing bates AM-ITC 00953684-687.

33. Attached hereto as Exhibit 31 is a true and correct copy of Interference Nos.

102,096, 102,097 and 102,334, *Fritsch v. Lin*, Notice Pursuant to 37 C.F.R. § 1.682(a) and Offer of Official Record From Civil Action No. 87-2617-Y Regarding Testimony of Egrie and Attachments, bearing bates AM-ITC 00950036-069.

34. Attached hereto as Exhibit 32 is a true and correct copy of the '178 File History Search Notes, bearing bates AM-ITC 00941744.

35. Attached hereto as Exhibit 33 is a true and correct copy of the '179 File History, Paper No. 38, 08/16/94 Office Action, bearing bates AM-ITC 00941456-495.

36. Attached hereto as Exhibit 34 is a true and correct copy of Takeuchi, et al., "Comparative Study of the Asparagine-linked Sugar Chains of Human Erythropoietins Purified from Urine and the Culture Medium of Recombinant Chinese Hamster Ovary Cells," J. Biol. Chem. 263(8): 3657-63 (1988).

37. Attached hereto as Exhibit 35 is a true and correct copy of Sasaki, et al., "Isolation of Erythropoietin by Monoclonal Antibody," Biomed. Biochim. Acta. 42 S: 202-206 (1983).

38. Attached hereto as Exhibit 36 is a true and correct copy of excerpts from Interference 102,096, 102,097 and 102,334, *Fritsch v. Lin*, Proposed Findings of Fact and Conclusions of Law for the Party Fritsch, bearing bates AM-ITC 00330523-529, 00330758-780.

39. Attached hereto as Exhibit 37 is a true and correct copy of Interference No. 102,334, *Fritsch v. Lin*, Declaration of Thomas A. Strickland, filed on April 5, 1990, bearing bates AM-ITC 00413369-379.

40. Attached hereto as Exhibit 38 is a true and correct copy of Interference No. 102,334, *Fritsch v. Lin*, Brief for the Senior Party Lin, bearing bates AM-ITC 00343886-950.

41. Attached hereto as Exhibit 39 is a true and correct copy of Lin et al., "Cloning and Expression of the Human Erythropoietin Gene," Proc. Nat'l Acad. Sci. 82: 7580-84 (1985), bearing bates AM-ITC 00327966-970.

42. Attached hereto as Exhibit 40 is a true and correct copy of Sasaki et al., "Carbohydrate Structure of Erythropoietin Expressed in Chinese Hamster Ovary Cells by a

Human Erythropoietin cDNA,” J. Biol. Chem. 262(25): 120579-76 (1987).

43. Attached hereto as Exhibit 41 is a true and correct copy of a compilation of the front pages of U.S. Patents 5,441,868, 5,547,933, 5,621,080, 5,756,349, 5,618,698, 5,955,422.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Signed this 22nd day of June, 2007.

By: /s/ Craig H. Casebeer

Craig H. Casebeer

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