

EXHIBIT A

Baxley Decl. in Support of Amgen's Opposition
To Roche's Motion for Summary Judgment that Claim 1
Of '422 Patent is Invalid Under 35 USC S. 112

30(b)(6) Deposition of Fu-Kuen Lin, Ph.D. -Volume I
CONFIDENTIAL

3/28/2007

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Certified Copy

AMGEN, INC.,

Plaintiff,

v.

Civil Action No.
05-CV-12237-WGY

F. HOFFMANN-LA ROCHE, LTD.,
a Swiss Company, ROCHE
DIAGNOSTICS GmbH, a German
Company, and HOFFMANN-LA
ROCHE, INC., a New Jersey
Corporation,

Defendants.

VIDEOTAPED DEPOSITION OF FU-KUEN LIN, PH.D.

VOLUME I

WESTLAKE VILLAGE, CALIFORNIA

MARCH 28, 2007

(This transcript contains
testimony designated confidential
as per Section 5(c) of the
Amended Protective Order. Please
treat the entire transcript in
accordance with the protective
order.)

Reported by: Harry Alan Palter, C.S.R. NO. 7708

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19 VIDEOTAPED DEPOSITION OF FU-KUEN LIN, PH.D.,
20 taken at the Four Seasons Hotel, Two Dole
21 Drive, Westlake Village, California, on
22 Wednesday, March 28, 2007, from 9:16 a.m. to
23 5:17 p.m., before Harry Alan Palter, Certified
24 Shorthand Reporter No. 7708, in and for the
25 State of California.

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I N D E X

WITNESS: Fu-Kuen Lin, Ph.D.

Volume I

EXAMINATION

PAGE

BY MS. BEN-AMI

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1 FU-KUEN LIN, PH.D., VOLUME I
 2 Amgen vs. Hoffman-LaRoche
 3 Wednesday, March 28, 2007
 4 Harry A. Palter, CSR No. 7708

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3/28/2007

1	WESTLAKE VILLAGE, CALIFORNIA	
2	WEDNESDAY, MARCH 28, 2007	
3	9:16 A.M.	
4		
5		09:17:01
6	THE VIDEOGRAPHER: We're on record.	09:17:01
7	Here begins the videotaped deposition	09:17:33
8	of Dr. Fu-Kuen Lin, Ph.D., tape 1, volume I, in	09:17:34
9	the matter of Amgen versus Hoffman-LaRoche, in	09:17:39
10	the U.S. District Court, District of	09:17:42
11	Massachusetts, case number 05 CV 12237 WGY.	09:17:45
12	Today's date is March 28.	09:17:51
13	And the time on the video monitor is	09:17:53
14	9:16 A.M.	09:17:57
15	The video operator today is Adriane	09:17:58
16	Castro, representing LiveNote World Service,	09:18:02
17	located at 221 Main Street, Suite 1250,	09:18:03
18	San Francisco, California 94105. Phone number	09:18:07
19	(415) 321-2300.	09:18:10
20	The court reporter today is Harry	09:18:16
21	Palter of Paulson Reporting and Litigation	09:18:18
22	Services, reporting on behalf of LiveNote World	09:18:21
23	Service.	09:18:22
24	Today's deposition is being taken on	09:18:27
25	behalf of the defendant and is taking place at	09:18:30

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1	the Four Seasons Hotel, Westlake Room, 2 Dole	09:18:32
2	Drive, Westlake Village, California 91362.	09:18:37
3	Counsel, please introduce yourselves	09:18:41
4	and state who you represent.	09:18:43
5	MS. BEN-AMI: Yes.	09:18:45
6	I'm Leora Ben-Ami from Kaye Scholer,	09:18:46
7	representing Roche.	09:18:49
8	And with me are two colleagues who	09:18:49
9	will introduce themselves.	09:18:51
10	MR. PECHENIK: Graham Pechenik, also	09:18:52
11	of Kaye Scholer for defendants.	09:18:55
12	MS. NOONAN: Danielle Noonan of Kaye	09:18:56
13	Scholer for defendants.	09:18:58
14	MR. MADRID: David Madrid of Day	09:19:00
15	Casebeer on behalf of Amgen, Inc., and the	09:19:03
16	witness, Dr. Fu-Kuen Lin.	09:19:05
17	I'm here with my colleague, Berrie	09:19:07
18	Goldman.	09:19:09
19	MS. WHITEFORD: Wendy Whiteford for	09:19:11
20	Amgen, Inc.	09:19:13
21	THE VIDEOGRAPHER: Would the court	09:19:17
22	reporter please swear in the witness.	09:19:18
23		09:19:26
24		
25		

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1	FU-KUEN LIN, PH.D.,	
2	having been duly administered an oath in	
3	accordance with Code of Civil Procedure	
4	Section 2094, was examined and testified as	
5	follows:	
6		09:19:27
7	THE VIDEOGRAPHER: Please begin.	09:19:28
8	MS. BEN-AMI: Thank you.	09:19:28
9		09:19:29
10	EXAMINATION	09:19:29
11	BY MS. BEN-AMI:	09:19:29
12	Q Good morning, Doctor.	09:19:30
13	Is there any reason that you cannot	09:19:31
14	testify today?	09:19:33
15	A No.	09:19:33
16	Q No medical reason; no overtiredness?	09:19:34
17	A No.	09:19:36
18	But I would need to take breaks, from	09:19:38
19	time to time, yes.	09:19:40
20	Q Of course.	09:19:40
21	And you understand that you have that	09:19:41
22	opportunity, if you need to take a break?	09:19:43
23	A Yes, I do.	09:19:45
24	Q Okay.	09:19:46
25	You've been deposed before?	09:19:46

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1	A	That's correct.	10:58:44
2	Q	Is that what that means?	10:58:44
3	A	Yes.	10:58:45
4	Q	So when did Amgen determine that the	10:58:46
5		primary structure of human EPO is 165 amino	10:58:50
6		acids?	10:58:55
7	A	I don't know when we determined that,	10:58:56
8		but the sequence exists in the product as	10:59:03
9		itself, when it's expressed by the cells, by	10:59:07
10		the gene, even though we have not determined.	10:59:11
11		But it exists as 165, yes.	10:59:14
12	Q	Okay.	10:59:17
13		But my question was, by November 30,	10:59:17
14		1984, had you determined that?	10:59:20
15	A	I don't know when that was	10:59:22
16		determined. I don't know.	10:59:26
17	Q	Well, you recall that in the patents,	10:59:26
18		you disclosed that the amino acid sequence in	10:59:29
19		figure 6 is 166 amino acids?	10:59:32
20	A	That's right.	10:59:36
21		That's deduced from the gene, yes.	10:59:37
22	Q	When did you determine that that was	10:59:40
23		incorrect?	10:59:42
24	A	No, it's always correct.	10:59:43
25		MR. MADRID: Objection.	10:59:44

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1	Objection.	10:59:45
2	THE WITNESS: The gene is always	10:59:45
3	correct.	10:59:46
4	MS. BEN-AMI: No.	10:59:47
5	I'm talking about the amino acid	10:59:47
6	sequence.	10:59:50
7	I want to be clear.	10:59:50
8	THE WITNESS: Yes. It's correct.	10:59:51
9	166 is correct.	10:59:52
10	BY MS. BEN-AMI:	10:59:52
11	Q So the amino acid sequence of human	10:59:53
12	EPO is 166 amino acids?	10:59:56
13	A As deduced from the gene.	10:59:58
14	Q Okay.	11:00:01
15	But I'm asking you what it is, not	11:00:01
16	deduced.	11:00:03
17	What is it?	11:00:04
18	A The actual -- the amino acids --	11:00:04
19	when, later on, we have the protein, we have	11:00:07
20	sequence -- when we have enough protein, we	11:00:10
21	sequence it. We knew it was made by the cells	11:00:13
22	as 165, yes.	11:00:16
23	Q Okay.	11:00:16
24	So was that only learned after	11:00:19
25	November 30, 1984?	11:00:21

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1	Vague and ambiguous.	15:27:56
2	MS. BEN-AMI: Okay.	15:27:57
3	I'll ask it a different way.	15:27:58
4	BY MS. BEN-AMI:	15:27:59
5	Q In fact, the amino acid sequence of	15:28:00
6	the mature human EPO includes only 165	15:28:02
7	specified amino acid residues; correct?	15:28:05
8	A The mature human EPO sequence, as	15:28:09
9	stated in figure 6, is 166 amino acid as	15:28:13
10	deduced from the gene.	15:28:21
11	So the gene, when it's transfected	15:28:22
12	into the cells, it's making one -- making the	15:28:25
13	amino acid -- probably is also 166, but	15:28:29
14	somehow, the last amino acid is removed in the	15:28:33
15	process of secreting.	15:28:36
16	Q So the recombinant EPO that is	15:28:41
17	actually secreted in the process described in	15:28:46
18	the specification only has 165 amino acids;	15:28:49
19	right?	15:28:49
20	A Yeah, that's correct.	15:28:53
21	As made by -- as the product you	15:28:55
22	isolate is 165. It's made by the gene. It's	15:28:58
23	specified by the gene. It's 166.	15:29:02
24	Q It's even bigger than that, because	15:29:04
25	it has the leader sequence; right?	15:29:06

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1 DECLARATION UNDER PENALTY OF PERJURY

2
3 I, Fu-Kuen Lin, Ph.D., do hereby
4 certify under penalty of perjury that I have
5 read the foregoing transcript of my deposition
6 taken March 28, 2007; that I have made such
7 corrections as appear noted herein, in ink,
8 initialed by me; that my testimony as contained
9 herein, as corrected, is true and correct.

10 DATED this _____ day of
11 _____, 20____, at _____,
12 California.

13
14
15 _____
16 Fu-Kuen Lin, Ph.D.
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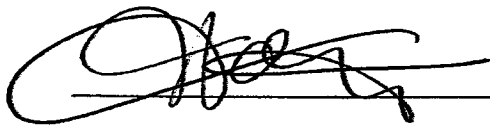
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REPORTER'S CERTIFICATION

I, Harry Alan Palter, Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the witness named in the foregoing deposition was, before the commencement of the deposition, duly administered an oath in accordance with Code of Civil Procedure Section 2094; that the testimony and proceedings were reported stenographically by me and later transcribed into computer-aided transcription under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 2nd day of April, 2007.



Harry Alan Palter, CSR No. 7708