

EXHIBIT B

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

Bertozzi, Carolyn, Ph.D.
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6/6/2007

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----X
AMGEN, INC.,

Plaintiff,

v.

Civil Action No.
05 Civ. 12237 WGY

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

Defendants.
-----X

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DEPOSITION OF CAROLYN BERTOZZI, Ph.D.,

New York, New York

Wednesday, June 6, 2007

REPORTED BY: BARBARA R. ZELTMAN
Professional Shorthand Reporter

Job Number: 12691

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June 6, 2007
9:10 a.m.

Deposition of CAROLYN BERTOZZI, Ph.D.
taken by Plaintiff, pursuant to Notice, at the
offices of DUANE MORRIS LLP, 380 Lexington Avenue,
New York, New York, before BARBARA R. ZELTMAN, a
Professional Shorthand Reporter and Notary Public
within and for the State of New York.

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A P P E A R A N C E S:

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|----|---|----------|
| 1 | CAROLYN BERTOZZI, Ph.D. - CONFIDENTIAL | 11:14:45 |
| 2 | I have seen that. | 11:14:47 |
| 3 | Q So that would be yes, there | 11:14:49 |
| 4 | is erythropoietin protein which is not | 11:14:50 |
| 5 | a glycoprotein? | 11:14:52 |
| 6 | A It's referred to that way in | 11:14:53 |
| 7 | the literature. | 11:15:01 |
| 8 | In my mind these are molecules | 11:15:02 |
| 9 | and structures. And the terminology is | 11:15:05 |
| 10 | in the literature but all of these have | 11:15:09 |
| 11 | molecular structures. | 11:15:12 |
| 12 | You could ascribe any name to | 11:15:13 |
| 13 | those molecular structures. It's a | 11:15:15 |
| 14 | discrete structure and a discrete name. | 11:15:21 |
| 15 | Q I confess I am one of those | 11:15:23 |
| 16 | people who use "erythropoietin" or | 11:15:25 |
| 17 | "EPO" more as a noun than an adjective. | 11:15:30 |
| 18 | So you'll have to forgive me for that. | 11:15:31 |
| 19 | Can we agree that if I say | 11:15:33 |
| 20 | "erythropoietin" I am referring to the | 11:15:35 |
| 21 | erythropoietin protein irrespective of | 11:15:40 |
| 22 | its glycosylation state. | 11:15:43 |
| 23 | Is that acceptable to you? | 11:15:45 |
| 24 | A Okay. | 11:15:46 |
| 25 | So for you erythropoietin just | |

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|----|--|----------|
| 1 | CAROLYN BERTOZZI, Ph.D. - CONFIDENTIAL | 11:15:50 |
| 2 | equals linkages of amino acids? That's | 11:15:55 |
| 3 | your definition? | 11:15:57 |
| 4 | Q Irrespective whether it's | 11:15:58 |
| 5 | glycosylated or not. | 11:16:00 |
| 6 | So erythropoietin could be | 11:16:02 |
| 7 | glycosylated or non-glycosylated? | 11:16:09 |
| 8 | A So you are referring to many | 11:16:10 |
| 9 | structures using the same term? | 11:16:12 |
| 10 | Q Right. Is that okay with | 11:16:13 |
| 11 | you? | 11:16:14 |
| 12 | A Well, it's confusing. | 11:16:19 |
| 13 | Because they are different molecules, | 11:16:21 |
| 14 | but as long as I know what you are | 11:16:23 |
| 15 | referring to. | 11:16:23 |
| 16 | Q Okay. | 11:16:24 |
| 17 | If I use it in a way you don't | 11:16:26 |
| 18 | understand, please let me know and | 11:16:29 |
| 19 | let's clarify it right then and there. | 11:16:35 |
| 20 | What do you understand the | 11:16:36 |
| 21 | phrase "recombinant erythropoietin | 11:16:41 |
| 22 | protein" to mean? | 11:16:43 |
| 23 | A Erythropoietin protein? | 11:16:45 |
| 24 | Recombinant erythropoietin protein? | 11:16:48 |
| 25 | Q Yes. | |

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| | | |
|----|---|----------|
| 1 | CAROLYN BERTOZZI, Ph.D. - CONFIDENTIAL | 11:16:50 |
| 2 | A Well, "recombinant" is the | 11:16:53 |
| 3 | term that's used to describe basically | 11:16:59 |
| 4 | making artificial DNAs; for example, | 11:17:07 |
| 5 | taking DNA sequence from some source, | 11:17:11 |
| 6 | amplifying it from the source and | 11:17:15 |
| 7 | integrating it into a plasmid that can | 11:17:20 |
| 8 | then be introduced into a host cell to | 11:17:25 |
| 9 | drive the translational machinery or | 11:17:31 |
| 10 | transcriptional and translational | 11:17:32 |
| 11 | machinery of that cell. | 11:17:36 |
| 12 | So recombinant erythropoietin | 11:17:39 |
| 13 | protein would be the erythropoietin | 11:17:43 |
| 14 | protein that was produced by a cell | 11:17:46 |
| 15 | that had this recombinant DNA inserted | 11:17:52 |
| 16 | into that cell. | 11:17:56 |
| 17 | Q What do you understand the | 11:17:57 |
| 18 | phrase "urinary erythropoietin protein" | 11:18:01 |
| 19 | to mean? | 11:18:07 |
| 20 | A Again erythropoietin protein, | 11:18:10 |
| 21 | and I don't know that there is such a | 11:18:11 |
| 22 | thing in urine. Because when you say | 11:18:17 |
| 23 | "erythropoietin protein" you include | 11:18:18 |
| 24 | all the different glycosylated forms. | 11:18:22 |
| 25 | Q Right. | |

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|----|--|----------|
| 1 | CAROLYN BERTOZZI, Ph.D. - CONFIDENTIAL | 11:18:24 |
| 2 | A So human urinary | 11:18:29 |
| 3 | erythropoietin protein in your | 11:18:30 |
| 4 | vernacular would be the collection of | 11:18:34 |
| 5 | molecules in the human urine that have | 11:18:45 |
| 6 | a common linkage of amino acids that | 11:18:49 |
| 7 | being encoded by the DNA. | 11:18:55 |
| 8 | Q Encoded by the erythropoietin | 11:18:57 |
| 9 | gene? | 11:18:57 |
| 10 | A The erythropoietin gene. | 11:18:58 |
| 11 | In other words, the linkage of | 11:19:01 |
| 12 | amino acids that's specified by the | 11:19:05 |
| 13 | sequence of the gene which in the case | 11:19:08 |
| 14 | of the human urinary erythropoietin | 11:19:13 |
| 15 | would not be a recombinant gene. It | 11:19:15 |
| 16 | would be the gene as it exists in the | 11:19:21 |
| 17 | human chromosomes. | 11:19:29 |
| 18 | Q Where in the body is human | 11:19:31 |
| 19 | urinary erythropoietin synthesized? | 11:19:39 |
| 20 | MR. HECKEL: Objection. | 11:19:49 |
| 21 | A I am not a physiologist; | 11:19:50 |
| 22 | preface with that. | 11:19:55 |
| 23 | But my understanding from | 11:19:56 |
| 24 | reading the literature is that all | 11:20:00 |
| 25 | human erythropoietin is originally | |

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|----|---|----------|
| 1 | CAROLYN BERTOZZI, Ph.D. - CONFIDENTIAL | 11:20:07 |
| 2 | produced in the kidney and some of that | 11:20:15 |
| 3 | material is released into the serum, | 11:20:20 |
| 4 | into the plasma of the blood, and then | 11:20:27 |
| 5 | eventually the material is processed | 11:20:31 |
| 6 | for excretion. So some subset appears | 11:20:42 |
| 7 | in the urine. | 11:20:42 |
| 8 | So my understanding is that | 11:20:45 |
| 9 | erythropoietin glycoproteins in the | 11:20:50 |
| 10 | urine would have prior to that | 11:20:54 |
| 11 | originated from blood and prior to that | 11:21:00 |
| 12 | from kidney. | 11:21:02 |
| 13 | I believe that's the order of | 11:21:03 |
| 14 | events that's proposed. And that's the | 11:21:08 |
| 15 | extent of my understanding of the | 11:21:09 |
| 16 | physiology. | 11:21:11 |
| 17 | Q So you are not an expert in | 11:21:12 |
| 18 | the physiology of erythropoietin? | 11:21:15 |
| 19 | MR. HECKEL: Objection. | 11:21:17 |
| 20 | A I am not an expert in the | 11:21:21 |
| 21 | pharmaco-dynamics, I should say, which | 11:21:30 |
| 22 | describes the sort of physiological | 11:21:38 |
| 23 | events by which molecules traffic from, | 11:21:45 |
| 24 | you know, kidney to other organs. | 11:21:50 |
| 25 | MR. LOEB: Sorry to interrupt | |

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|----|--|----------|
| 1 | CAROLYN BERTOZZI, Ph.D. - CONFIDENTIAL | 11:21:50 |
| 2 | you. We need to change the tape. | 11:21:52 |
| 3 | So if we can go off the record, | 11:21:55 |
| 4 | please. | 11:21:55 |
| 5 | THE VIDEOGRAPHER: Time is | 11:21:56 |
| 6 | 11:18 a.m. This completes Tape 1, | 11:21:58 |
| 7 | Volume 1 of the videotaped | 11:22:00 |
| 8 | deposition of Dr. Carolyn Bertozzi. | 11:29:36 |
| 9 | (A brief recess was | 11:29:36 |
| 10 | taken.) | 11:29:37 |
| 11 | THE VIDEOGRAPHER: Time is | 11:29:37 |
| 12 | 11:26 a.m. This is Tape 2, Volume 1 | 11:29:41 |
| 13 | of the continued videotaped | 11:29:43 |
| 14 | deposition of Dr. Carolyn Bertozzi. | 11:29:46 |
| 15 | Q Dr. Bertozzi, a moment ago | 11:29:47 |
| 16 | you gave me a definition of urinary | 11:29:52 |
| 17 | erythropoietin and you gave you a | 11:29:53 |
| 18 | definition of recombinant | 11:29:54 |
| 19 | erythropoietin. | 11:29:56 |
| 20 | You can assume going forward | 11:29:57 |
| 21 | that if I use those two phrases I'm | 11:30:01 |
| 22 | just adopting your definitions. | 11:30:03 |
| 23 | Is that okay? | 11:30:05 |
| 24 | A Can you read back my | 11:30:05 |
| 25 | definitions? Just want to make sure | |

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CAROLYN BERTOZZI, Ph.D. - CONFIDENTIAL

05:43:18

05:43:19

THE VIDEOGRAPHER: Time is

05:43:20

5:39 p.m. This completes Tape 4,

05:43:24

Volume 1 of the videotaped

05:43:26

deposition of Dr. Carolyn Bertozzi.

(The deposition was concluded

at 5:39 p.m.)

CAROLYN BERTOZZI, Ph.D.

Subscribed and sworn

to before me this

_____ day of _____, 2007

Notary Public

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C E R T I F I C A T E
STATE OF NEW YORK)

: SS.
COUNTY OF NEW YORK)


I, BARBARA R. ZELTMAN,

Shorthand Reporter and Notary
Public, within and for the State of
New York, do hereby certify:

That CAROLYN BERTOZZI, Ph.D.,
the witness whose deposition is
hereinbefore set forth, was duly
sworn by me and that such deposition
is a true record of the testimony
given by the witness.

I further certify that I am
not related to any of the parties
to this action by blood or marriage,
and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 8th day of
June, 2007.



BARBARA R. ZELTMAN
Court Reporter and Notary Public