

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

AMGEN INC., )  
)  
Plaintiff, )  
)  
v. )  
)  
F. HOFFMANN-LA ROCHE LTD, a )  
Swiss Company, ROCHE DIAGNOSTICS )  
GMBH, a German Company, and )  
HOFFMANN LA ROCHE INC., a New )  
Jersey Corporation, )  
)  
Defendants. )

Civil Action No.: 1:05-cv-12237 WGY

**DECLARATION OF WILLIAM G. GAEDE, III,  
IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT OF  
CLAIM 1 OF THE '422 PATENT AND CLAIMS 9 AND 12 OF THE '933 PATENT**

I, William G. Gaede, III, declare as follows:

1. I am a partner with McDermott Will & Emery LLP and counsel for Amgen Inc. in the above-captioned matter.

2. I am submitting this declaration in support of Amgen Inc.’s Opposition to Defendants’ Motion for Summary Judgment of Non-infringement Claim 1 of the '422 Patent and Claims 9 and 12 of the '933 Patent and accompanying Local Rule 56.1 Statement of Material Facts As To Which It Contends There Exists A Genuine Issue To Be Tried.

3. I have knowledge of the following, and if called as a witness, could and would testify competently to the contents herein.

4. During prosecution of the 08/100,197 patent application (“the '197 application”), which issued as the '422 patent, Applicant Lin requested a declaration of interference between then-pending claims 1 and 2 of the '197 application and U.S. Pat. No. 4,806,524 (“the '524 patent”). *See* Suh Decl. to Roche Motion, Ex. J at 3-4. The interference count proposed by Applicant Lin was: “An erythropoietin preparation containing one or more selected from the group consisting of bovine serum albumin, human serum albumin and gelatin.” *Id.*

Gaede Decl. re Opp to MSJ of Non-  
Infringement of '422 and '933 Patents  
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5. On information and belief, an interference was not declared in response to Applicant Lin's request for declaration of interference between the '197 application and the '524 patent.

6. On information and belief, Applicant Lin did not request declaration of an interference between the '197 application and the '524 patent.

7. Attached as Exhibit 1 is a true and correct copy of excerpts of the EPOGEN<sup>®</sup> product insert.

I declare, under penalty of perjury, under the laws of the United States, that the foregoing is true and correct and that this Declaration was completed at Palo Alto, California this 29<sup>th</sup> day of June 2007.

/s/ William G. Gaede, III

William G. Gaede, III

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the Electronic Case Filing (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 the above date.

                  /s/ Patricia R. Rich                    
Patricia R. Rich