

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMGEN, INC.,

Plaintiff,

v.

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

Defendants.

Civil Action No. 05-12237 WGY

**DECLARATION OF KEITH E. TOMS IN SUPPORT OF
ROCHE'S OPPOSITION TO AMGEN'S MOTION FOR SUMMARY JUDGMENT
THAT DR. LIN'S ASSERTED CLAIMS ARE DEFINITE, ADEQUATELY
DESCRIBED AND ENABLED**

I, Keith E. Toms, hereby declare under penalty of perjury that:

1. I am an attorney admitted to the Bar of the State of Massachusetts. I am an attorney at the law firm of Bromberg & Sunstein LLP and am counsel for Defendants in the above-referenced case.

2. I make this declaration in support of in support of Roche's Opposition To Amgen's Motion For Summary Judgment That Dr. Lin's Asserted Claims Are Definite, Adequately Described And Enabled.

3. Exhibit A is a true and correct copy of Goto, et al., Production of Recombinant Human Erythropoietin in Mammalian Cells: Host-Cell Dependency of the Biological Activity of the Cloned Glycoprotein, Biotechnology, Vol. 6, 67 (1988).

4. Exhibit B is a true and correct copy of excerpts from the May 17, 2007 Deposition Transcript of Ronald W. McLawhon at 266:8-267:24.

5. Exhibit C is a true and correct copy of the Lodish et. al. *Molecular Cell Biology*, 6th ed. Chapter 2.
6. Exhibit D is a true and correct copy of the November 30, 1984, Application No. 06/675,298.
7. Exhibit E is a true and correct copy of the June 16, 1986, Office Action, 06/675,298-8.
8. Exhibit F is a true and correct copy of the July 10, 1987, Amendment and Reply, 06/675,298-20.
9. Exhibit G is a true and correct copy of the June 2, 1988, Office Action, 07/113,178-4.
10. Exhibit H is a true and correct copy of March 28, 2007 Deposition Transcript of Fu-Kuen Lin at 304:12-305:5.
11. Exhibit I is a true and correct copy of an excerpt of Webster's Dictionary, Third Edition at 20-21.
12. Exhibit J is a true and correct copy of a laboratory notebook of Fu-Kuen Lin, dated November 28, 1988.

Signed under the penalties of perjury pursuant to 28 U.S.C. Sec. 1746 this 5th day of July, 2007.

/s/ Keith E. Toms
Keith E. Toms

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 (NEF) and paper copies will be sent to those indicated as non registered participants on the above date.

/s/ Nicole A. Rizzo
Nicole A. Rizzo

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