

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.: 05-12237 WGY

AMGEN INC.'S RESPONSE TO ROCHE'S RULE 56.1 STATEMENT IN OPPOSITION
TO AMGEN'S MOTION FOR SUMMARY JUDGMENT THAT DR. LIN'S ASSERTED
CLAIMS ARE DEFINITE, ADEQUATELY DESCRIBED AND ENABLED

Amgen provides the following response to Roche's Rule 56.1 Statement in
Opposition to Amgen's Motion for Summary Judgment and corresponding Rule 56.1 Statement
filed in support thereof.

1. Regarding Roche's responses to Amgen's Rule 56.1 Statement, Amgen notes that in
response to the facts set forth at ¶¶ 9 and 10 of Amgen's Statement, Roche objects on the
grounds that the cited information or documents were not previously produced by Amgen. The
information in ¶ 9 is publicly available from the USPTO.gov website and the document cited in
¶ 10 is a Roche patent available on the same website. As such, Amgen does not understand the
basis for Roche's complaint.

2. Regarding the additional facts offered by Roche (at paragraphs 25-95 of Roche's
Rule 56.1 Statement), the vast majority of the facts alleged are duplicative of statements
previously set forth in Roche's Rule 56.1 Statements in support of its various motions for

summary judgment seeking to invalidate the claims-at-issue under 35 U.S.C. § 112. In response to such alleged facts, Amgen incorporates by reference its Rule 56.1 Statements, filed in support of its oppositions to such motions. These Statements are set forth at Docket Nos. 566, 581, and 629. In addition, Amgen incorporates by reference the Rule 56.1 Statement that will be filed on July 13, 2007 in response to Roche's July 3, 2007 Motion for Summary Judgment that '422 Claim 1 is Invalid Under § 112. The Rule 56.1 Statement for that motion recites the facts alleged at ¶¶ 25-26 and 28-31 of Roche's Rule 56.1 Statement herein at issue.

3. For the remaining facts (the facts alleged at paragraphs 27, 63-64, and 65-70), Amgen responds:

- As to paragraph 27, Amgen contests the statement of fact contained in Roche's Facts paragraph 27 because the statement is imprecise as to which claims and limitations it refers and discounts that certain limitations can denote a structural limitation. Docket No. 613 at 18.

- As to paragraphs 63-64, Amgen contests the statements of fact contained in Roche's Facts paragraphs 63-64 because they are inconsistent with other facts alleged by Roche in support of its other motions for summary judgment. *See* Docket No. 539 (arguing that Amgen has failed to prove that Roche's CHO cells produced the *requisite level of EPO* on the ground that, *inter alia*, Amgen failed to use the *specific set* of conditions used in Roche's commercial process); Docket No.568 at 6, n. 4 (arguing that '349 claim 7 requires some baseline level of production).

- As to paragraphs 65-70, Amgen incorporates by reference its Rule 56.1 Statement, to be filed on July 13, in response to Roche's two July 3, 2007 Motions for Summary Judgment of Estoppel.

Dated: July 12, 2007

Respectfully Submitted,

AMGEN INC.,
By its attorneys,

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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
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