

# EXHIBIT 3

USDC - Depo: Varki, Ajit 6/29/2007 8:03:00 AM

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

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5 AMGEN INC., )

)  
6 Plaintiff, )

)  
7 vs. ) Civil Action

)  
8 F. HOFFMANN-LA ROCHE LTD., a Swiss ) No. 05-12237 WGY  
Company, ROCHE DIAGNOSTICS GmbH, )

9 a German Company, and HOFFMANN-LA )  
ROCHE, INC., a New Jersey ) CONFIDENTIAL

10 Corporation )

)  
11 Defendants. )

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15 DEPOSITION OF AJIT VARKI, M.D.  
16 FRIDAY, JUNE 29, 2007

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REPORTED BY:  
24 LINDA D. WHITE  
CSR NO. 12009

25

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1 THE WITNESS: I don't think there's -- my  
2 expertise is in suggesting that the lineup be done  
3 because, obviously, if you look at something, it  
4 looks generally similar and you say it's similar.  
5 Or this term "indistinguishable" that's been thrown  
6 around. You know, if you take a quick look, you  
7 might say, "Oh, those bands are indistinguishable."

8 What I'm saying, based on experience and  
9 based on my suspicion about the sulfate, I'm  
10 recommending that we do that. So now you have to  
11 tell the juror to -- or probably take this example,  
12 which is -- you know, when you do experiments  
13 several times and one shows a definite difference  
14 and it's done right, and the other ones give  
15 ambiguous results, the rule of thumb is believe in  
16 the definite difference. Because the ambiguous  
17 results could be because it's an ambiguous  
18 experiment.

19 But I think that I would suggest that that  
20 exercise is worthwhile on several of these gels. I  
21 see this -- I notice this over and over again in  
22 looking at them.

23 BY MR. JAGOE:

24 Q Do you know of any structural differences  
25 between recombinant human EPO and EPO produced by

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1 human tumor cells in the prior art?

2 MR. LOEB: Objection. Vague and ambiguous.

3 THE WITNESS: Prior art --

4 MR. LOEB: Outside the scope of Dr. Varki's  
5 expertise.

6 THE WITNESS: Prior art prior to 1983?

7 BY MR. JAGOE:

8 Q Yes.

9 A I don't believe I looked into the  
10 structure of -- I don't recall any preparation that  
11 was good enough from tumor to, you know, make such a  
12 determination of sufficient quality. As I did, I  
13 listed all the ones that I could find.

14 Q So your opinion that there are differences  
15 between the language of Claim 3 of the 933 Patent  
16 and the human urinary EPO in the prior art, is based  
17 at least in part on the fact that recombinant EPO is  
18 from cells grown in monolayer culture and human  
19 urinary EPO was produced from a kidney in a  
20 specialized environment; is that correct?

21 MR. LOEB: Objection. Mischaracterizes the  
22 witness' testimony. Monolayer comes from --

23 THE WITNESS: My -- I don't think that's the  
24 primary basis of -- that is what I come back to try  
25 to explain the differences. Come back to saying,

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1 gee, why are they so different?

2 And to me the best explanation for that is  
3 the fact that is -- even known back then -- when  
4 proteins come from two different cell types, they're  
5 likely to have different glycosylation.

6 So my opinion doesn't start from the  
7 knowledge that recombinant and kidney, although I  
8 would place the bet it would turn out to be  
9 different. And -- but when you actually look and  
10 see the differences, then you go back and say why.  
11 Well, the most likely explanation is one is human --  
12 one is coming from this unknown cells in the kidney,  
13 and the other is coming from, at that time, CHO or  
14 COS cell.

15 BY MR. JAGOE:

16 Q Do you have an opinion as to whether or  
17 not the claims of the 933 Patent cover structures  
18 that are the same or similar to the structures of  
19 EPO produced by human tumors?

20 MR. LOEB: Objection. Outside the scope of  
21 Dr. Varki's expert opinions and vague and ambiguous.

22 THE WITNESS: As I said, I did not look at any  
23 detail and to human -- human tumor EPO, but knowing  
24 what I know about human tumors and their sialylation  
25 differences, I might see some differences. But I