

EXHIBIT 1

USDC - Depo: Kunin, Stephen 6/27/2007 9:03:00 AM

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3
4 AMGEN, INC.,
5 Plaintiff,

CASE NO. 05-CV-12237-WGY

6 vs.

7 F. HOFFMAN-LAROCHE, LTD., a (This transcript contains
Swiss Company, ROCHE testimony designated as per
8 DIAGNOSTICS GmbH, a German the protective order in this
Company and HOFFMAN LAROCHE, matter)
9 INC., a New Jersey Corporation,
10 Defendants.

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13 CONFIDENTIAL

14 VIDEOTAPED DEPOSITION OF STEPHEN G. KUNIN, ESQ.

15 Wednesday, June 27, 2007

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1 Q. I'm just asking if you remember anything else

2 other than what you've already stated --

3 MR. MAMMEN: Objection. Asked and answered.

4 BY MR. FORCHHEIMER: Q. -- without having the
5 manual.

6 MR. MAMMEN: Objection. Asked and answered.

7 Argumentative.

8 THE WITNESS: I would have to look.

9 BY MR. FORCHHEIMER: Q. Could you look at
10 paragraph 323.

11 You -- in this paragraph, you have some
12 discussion about whether or not the special status of
13 the '179 application was revoked.

14 You state that the patent office suspended
15 prosecution of the application for six months during
16 interference so it could consider whether or not to
17 declare an interference.

18 And you say, At that point, therefore, the
19 patent office was no longer treating the application as
20 special as far as timeliness of action based upon
21 applicant's prior correspondence.

22 Did the patent office or the examiner ever
23 explicitly revoke a special status?

24 MR. MAMMEN: I'm going to object to the
25 question on the basis that this section of the report

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1 responds to a portion of Mr. Sofocleous's report that is
2 not reflected in Roche's first amended answer and is,
3 therefore, not a subject matter that's been properly
4 pled in this case.

5 BY MR. FORCHHEIMER: Q. Do you need me to
6 repeat the question?

7 A. I did not see any specific indication of an
8 express revocation of the treatment of the application
9 as special. In fact, in my experience, I've never seen
10 one.

11 Q. Can you look at paragraph 330.

12 A. I have that in front of me.

13 Q. If you read the first seven lines or so, you
14 talk about the fact that Amgen's counsel identified the
15 '619 EP application to the patent office in the text of
16 the '298 application and that the Amgen's counsel next
17 identified the publication on a PTO-1449.

18 Do you see that?

19 A. Yes.

20 Q. Would you agree that by submitting that
21 reference at two different points in the '298
22 application, that applicants or applicant himself
23 believes that the reference was potentially material?

24 MR. MAMMEN: Objection. Calls for speculation.

25 Lacks foundation.

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1 THE WITNESS: Absolutely not. In fact, the
2 rule specifically goes to the contrary.

3 BY MR. FORCHHEIMER: Q. Can you explain
4 further?

5 A. If you look at the Rules 1.56 and duty of
6 disclosure rules, it basically says by a submission of
7 information in an information disclosure statement, it
8 shall not act as an admission that the information is
9 material.

10 Q. Well, I'm not saying that it's an admission
11 that it was material. I'm asking if by virtue of
12 submitting that reference, the applicant at least
13 thought it was potentially material.

14 MR. MAMMEN: Objection. Asked and answered.
15 Argumentative.

16 And I will reassert my objection that the
17 questioning on this section of the report is outside the
18 scope of the issues in this case.

19 And perhaps in the interest of expediency, I'll
20 just make that a standing objection and won't need to
21 renew it for every question.

22 THE WITNESS: Well, as I answered before,
23 consistent with the rule, no submission is an admission
24 of materiality. I'm not a mind reader, so I have no
25 idea what the thought process is. But by operation of

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1 specific circumstances. I've given you two examples
2 that I'm aware of.

3 Q. Okay. You can put that aside for now.

4 Can you turn to paragraph 375 of your report.

5 You note in paragraph 375 that as Judge Young
6 found in TKT, applicant attached a declaration by
7 Dr. Cummings to an amendment filed on February 16th,
8 1995, and attached a copy of the Browne publication.

9 Do you notice that?

10 A. I see that.

11 MR. MAMMEN: I'm going to object to the
12 questioning concerning this section of Mr. Kunin's
13 report on this basis of my standing objection concerning
14 the issues that are properly within the litigation in
15 view of Judge Young's denial of a motion to amend.

16 MR. FORCHHEIMER: I would just note that in
17 view of Judge Young's denial to amend, I believe this
18 issue still remains in the case, but I will continue
19 with questioning regardless.

20 MR. MAMMEN: Well, I think the question is open
21 to dispute. But you're free to continue your
22 questioning.

23 BY MR. FORCHHEIMER: Q. Is it your contention
24 that applicants fulfilled their duty of disclosure by
25 attaching a copy of the Browne publication even though

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1 his report.

2 THE WITNESS: I'm -- I'm not a technical
3 expert. I'm just not familiar with the technology.

4 BY MR. FORCHHEIMER: Q. Are you aware that
5 Judge Young in TKT held that Claim 7 covers COS host
6 cells?

7 A. He may have very well have done that.

8 Q. Are you aware that Amgen's position in this
9 case is that Claim 7 covers COS host cells?

10 A. That could very well be the case.

11 Q. Can you look at page -- at paragraph 430 of
12 your report.

13 In the indented portion at the bottom, you note
14 that a claim defining the host cell as a COS cell was
15 cancelled from the '178 application on January 10th,
16 1990.

17 Do you see that?

18 A. I see that.

19 Q. Do you know if a claim covering a host cell as
20 a COS cell was ever reintroduced?

21 MR. MAMMEN: I'm going to object to these
22 questions as well. The questions concerning this
23 section of Mr. Kunin's report also is pertaining to
24 subject matter that's not properly at issue in the
25 litigation due to the denial of the motion to amend.

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1 BY MR. FORCHHEIMER: Q. Can you turn in your
2 supplemental report to paragraph 31.

3 Do you see paragraph 31?

4 A. I have that in front of me.

5 Q. And do you see, midway through the page,
6 Because -- the paragraph, Because Dr. Goldwasser's
7 urinary EPO preparation had been shown to lack the
8 therapeutic effectiveness of Lin's claimed EPO, the fact
9 that Goldwasser's EPO, like so many EPO preparations
10 before it, had also been combined with human serum
11 albumin was of no material significance to the
12 patentability of Lin's claimed invention, a
13 pharmaceutical composition comprised of therapeutically
14 effective human EPO.

15 Do you see that?

16 A. I see that.

17 MR. MAMMEN: And I'm going to object to -- on
18 the basis of the claims that are properly in suit to any
19 of the theories discussed in Mr. Kunin's supplemental
20 report as not being properly part of this case due to
21 the denial of Roche's motion to amend.

22 BY MR. FORCHHEIMER: Q. Is the statement that
23 I just quoted a recitation of Amgen's argument in the
24 TKT case?

25 A. My recollection is that was my understanding of