

EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 ----- X

4 AMGEN, INC., :
5 Plaintiff, : Case No. 05-12237 WGY

6 v. :
7 F. HOFFMAN-LA ROCHE LTD., :

8 ROCHE DIAGNOSTICS GmbH, and :

9 HOFFMANN-LA ROCHE, INC. :

10 Defendants. :

11 ----- X

12 CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

13 Herndon, Virginia

14 Friday, June 22, 2007

15 Videotape Deposition of MICHAEL

16 SOFOCLEOUS, a witness herein, called for examination

17 by counsel for Plaintiff in the above-entitled

18 matter, the witness being duly sworn by SUSAN L.

19 CIMINELLI, a Notary Public in and for the

20 Commonwealth of Virginia, taken at the Hyatt Dulles,

21 2300 Dulles Corner Boulevard, Herndon, VA, at

22 8:50 a.m., and the proceedings being taken down by

23 Stenotype by SUSAN L. CIMINELLI, CRR, RPR, and

24 transcribed under her direction.

25

1 APPEARANCES:

2

3 On behalf of the Plaintiff:

4 CHRISTIAN E. MAMMEN, ESQ.

5 ANDY H. CHAN, ESQ.

6 Day Casebeer Madrid & Batchelder LLP

7 20300 Stevens Creek Blvd., Suite 400

8 Cupertino, CA 98014

9 (408) 873-0110

10

11 On behalf of the Defendant:

12 THOMAS F. FLEMING, ESQ.

13 DANIEL E. FORCHHEIMER, ESQ.

14 Kaye Scholer LLP

15 425 Park Avenue

16 New York, NY 10022-3598

17 (212) 836-7515

18

19 ALSO PRESENT:

20 SALLY HOLTSLANDER

21 ELLEN HEBERT, Videographer

22

23

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1 C O N T E N T S

2 WITNESS EXAMINATION BY COUNSEL FOR

3 MICHAEL SOFOCLEOUS PLAINTIFF

4 By Mr. Mammen 6, 266, 268

5 DEFENDANT

6 By Mr. Fleming 261, 267

7

8 Afternoon Session - Page 130

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10 E X H I B I T S

11 SOFOCLEOUS EXHIBIT NO. PAGE NO.

12 Exhibit 1 April 6, 2007 Sofocleous Expert Report 22

13 Exhibit 2 Curriculum Vitae, Sofocleous 43

14 Exhibit 3 U.S. Patent 5,547,933 file history 58

15 Exhibit 4 37 CFR Section 1.5 77

16 Exhibit 5 Patent 5,441,868 file history 101

17 Exhibit 6 Patent 4,703,008 file history 115

18 Exhibit 7 Declaration of Michael Sofocleous in 158

19 support of Defendant's motion for

20 summary judgment

21 Exhibit 8 Fifth Edition Forward MPEP 186

22 Exhibit 9 Fifth Edition Manual of Patent 188

23 Examination Procedure

24

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1 totality of the circumstances.

2 BY MR. MAMMEN:

3 Q. Now, in your report, you expressed no
4 opinion as to whether there was any intent to deceive
5 the patent office. Isn't that correct?

6 MR. FLEMING: Objection. Mischaracterizes
7 his report. Mischaracterizes his testimony.

8 THE WITNESS: No.

9 BY MR. MAMMEN:

10 Q. Can you identify for me anywhere in your
11 report where you have opined that anyone intended to
12 deceive the patent office?

13 MR. FLEMING: Objection. Argumentative.

14 THE WITNESS: I think that's a clear
15 indication of my report.

16 BY MR. MAMMEN:

17 Q. Can you identify anywhere in the report
18 where you so state?

19 MR. FLEMING: Objection. Argumentative.
20 Asked and answered.

21 THE WITNESS: It's clear from reading my
22 report that there is sufficient evidence and
23 sufficient facts upon which the judge can find intent
24 to deceive.

25 BY MR. MAMMEN:

1 Q. Do you use the words intent to deceive
2 anywhere in your report?

3 MR. FLEMING: Objection. Vague.

4 THE WITNESS: I think that's a clear
5 implication of my report.

6 BY MR. MAMMEN:

7 Q. Do you use those words anywhere in your
8 report?

9 MR. FLEMING: Objection. Do you want him
10 to read the report to find out? Or is this going to
11 be a memory test? Because now you've asked it five
12 times and he has answered your question so --

13 MR. MAMMEN: He has not answered the
14 question yet.

15 MR. FLEMING: Maybe not to your liking,
16 but he has answered it sufficiently.

17 BY MR. MAMMEN:

18 Q. What's your basis for -- to the extent you
19 offer any opinion as to intent, what's the basis for
20 your opinion?

21 A. I think the report sets out the facts upon
22 which the fact finder can conclude there is an intent
23 to deceive.

24 Q. Is whether or not someone intended to
25 deceive the patent office a matter of patent office

1 policy or procedure?

2 MR. FLEMING: Objection. Vague.

3 Incomplete hypothetical.

4 THE WITNESS: I think it would be included

5 within patent office practice, provided the court

6 would permit me to testify on it.

7 BY MR. MAMMEN:

8 Q. Is it your opinion that legal argument can

9 constitute a misrepresentation within the meaning of

10 Rule 56?

11 A. Yes.

12 Q. What authorities do you rely on for that

13 proposition?

14 A. It's set forth in my report.

15 Q. Is it your opinion that characterizations

16 of references that are already before the examiner

17 already -- strike that.

18 Is it your opinion that characterizations

19 of references already of record in the examination

20 can constitute misrepresentation?

21 MR. FLEMING: Objection. Vague.

22 Incomplete hypothetical.

23 THE WITNESS: Mischaracterization of

24 references can constitute inequitable conduct.

25 BY MR. MAMMEN: