

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN INC.,)	
)	
Plaintiff,)	
)	Civil Action No.: 05-12237 WGY
v.)	
)	
F. HOFFMANN-LAROCHE)	
LTD., a Swiss Company, ROCHE)	
DIAGNOSTICS GmbH, a German)	
Company and HOFFMANN LAROCHE)	
INC., a New Jersey Corporation,)	
)	
Defendants.)	
_____)	

**DECLARATION OF DEBORAH E. FISHMAN IN SUPPORT OF
AMGEN'S OPPOSITION TO DEFENDANTS' MOTION TO PRECLUDE TESTIMONY
FROM AMGEN'S BELATEDLY DISCLOSED FACT WITNESSES**

I, Deborah E. Fishman, declare as follows:

1. I am a partner at the law firm of Day Casebeer Madrid & Batchelder LLP, counsel for plaintiff Amgen Inc. I am admitted to practice law before this Court (*pro hac vice*) and all of the Courts of the State of California.

2. I make this declaration of my own personal knowledge. If called to testify as to the truth of the matters stated herein, I could and would testify competently.

3. On information and belief, I am informed and understand that Amgen produced Dr. Eschbach's prior testimony from the *Amgen v. HMR/TKT* case to Roche on June 1, 2006 at the following production number ranges: AM-ITC 00920214-405 (Deposition transcript), AM-ITC 00843611-637 (Trial transcript), and AM-ITC 0085388-520 (Remand trial transcript). On information and belief, I am informed and understand that Amgen produced Dr. Orkin's prior testimony from the *Amgen v. HMR/TKT* case to Roche on June 1, 2006 at the following production number ranges: AM-ITC 00920915-000921111 (Deposition transcript) and AM-ITC 00857967-858117 (Expert report).

4. On information and belief, I am informed and understand that Amgen produced Dr. Ullrich's prior testimony from the *Amgen v. Chugai* case to Roche on May 31, 2006 bearing production numbers AM-ITC 00113365-521.

5. On information and belief, I understand that Amgen produced to Roche in May of 2006 more than 140 documents from its files where Dr. Berk was an author, recipient, custodian, copyee, or where he was mentioned in the text of the document.

6. Attached hereto as Exhibit 1 is a true and correct copy of a printout of the website http://www.gene.com/gene/ir/financials/annual-reports/2006/editorial/herceptin_casestudy.jsp.

7. Attached hereto as Exhibit 2 is a true and correct copy of the Declaration of Dr. Stuart Orkin and Exhibits thereto, in *F.Hoffman-La Roche ./. Kirin-Amgen, Inc.*, DE 34 82 828, dated January 3, 1994, bearing production numbers AM-ITC 01040832 - 871.

8. Attached hereto as Exhibit 3 is a true and correct copy of Roche's Supplemental Rule 26(a) Disclosures, served on March 27, 2007
9. Attached hereto as Exhibit 4 is a true and correct copy of a letter from D. Fishman to T. Fleming, dated April 9, 2007.
10. Attached hereto as Exhibit 5 is a true and correct copy of an email from D. Fishman to T. Fleming, dated March 21, 2007.
11. Attached hereto as Exhibit 6 is a true and correct copy of Roche's subpoena on Joseph W. Eschbach, dated March 12, 2007.
12. Attached hereto as Exhibit 7 is a true and correct copy of a letter from J. Phan to G. LaRosa, dated April 13, 2007.
13. Attached hereto as Exhibit 8 is a true and correct copy of a letter from M. Moore to P. Fratangelo, dated June 2, 2007.
14. Attached hereto as Exhibit 9 is a true and correct copy of a letter from R. Day to L. Ben-Ami, dated May 21, 2007.
15. Attached hereto as Exhibit 10 is a true and correct copy of Roche's Second Set of Requests for Production, served on January 8, 2007.
16. Attached hereto as Exhibit 11 is a true and correct copy of a letter from M. Izraelewicz to T. Fleming, dated April 9, 2007.
17. Attached hereto as Exhibit 12 is a true and correct copy of a letter from H. Heckel to M. Moore, dated May 31, 2007.
18. Attached hereto as Exhibit 13 is a true and correct copy of a letter from M. Moore to H. Heckel, dated May 31, 2007.
19. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from the deposition transcript Dr. Stuart Orkin, taken on June 5, 2007.
20. Attached hereto as Exhibit 15 is a true and correct copy of Amgen's subpoena on Genentech, dated March 13, 2007.
21. Attached hereto as Exhibit 16 is a true and correct copy of a letter from T. Ross to

H. Williams, dated March 27, 2007.

22. Attached hereto as Exhibit 17 is a true and correct copy of a letter from D. Fishman to T. Fleming, dated July 18, 2007.

23. Attached hereto as Exhibit 18 is a true and correct copy of a letter from D. Fishman to T. Fleming, dated July 24, 2007.

24. Attached hereto as Exhibit 19 is a true and correct copy of a letter from D. Fishman to T. Fleming, dated July 25, 2007.

25. Attached hereto as Exhibit 20 is a true and correct copy of a letter from R. Day to L. Ben-Ami, dated May 25, 2007.

26. Attached hereto as Exhibit 21 is a true and correct copy of a letter from D. Fishman to T. Fleming, dated July 3, 2007.

27. Attached hereto as Exhibit 22 is a true and correct copy of a letter from D. Madrid to T. Fleming, dated July 5, 2007.

28. Attached hereto as Exhibit 23 is a true and correct copy of Amgen's 3rd Supplemental Disclosures, served on July 10, 2007.

29. Attached hereto as Exhibit 24 is a true and correct copy of excerpts from the deposition transcript of Dr. Arnold Berk, taken on June 7, 2007.

30. Attached hereto as Exhibit 25 is a true and correct copy of a letter from D. Fishman to T. Fleming dated March 2, 2007.

31. Attached hereto as Exhibit 26 is a true and correct copy of a letter from M. Izraelewicz to T. Fleming, dated April 9, 2007.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Signed this 30th day of July, 2007.

By: /s/ Deborah E. Fishman
Deborah E. Fishman

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

Michael R. Gottfried