

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.: 1:05-CV-12237 WGY

DECLARATION OF WILLIAM G. GAEDE, III, IN SUPPORT OF
PLAINTIFF'S MOTION IN LIMINE NO. 17: TO EXCLUDE ROCHE FROM
PRESENTING EVIDENCE TO CHALLENGE THE NON-OBVIOUSNESS OF THE
DNA SEQUENCE ENCODING FOR HUMAN ERYTHROPOIETIN IN 1983

I, William G. Gaede, III, declare as follows:

1. I am a partner with McDermott Will & Emery LLP and counsel for Amgen, Inc.
in the above-captioned matter.

2. I am submitting this declaration in support of Plaintiff's Motion In Limine No. 17:
to Exclude Roche from Presenting Evidence to Challenge the Non-obviousness of the DNA
Sequence Encoding for Human Erythropoietin in 1983.

3. I have knowledge of the following, and if called as a witness, could and would
testify competently to the contents herein.

4. Attached as Exhibit 1 is a true and correct copy of a Settlement Agreement
between Genetics Institute, Inc. and Amgen Inc., numbered AM-ITC 00799255 - AM-ITC
00799271, dated May 12, 1993.

5. Attached as Exhibit 2 is a true and correct copy of a Judgment in the Amgen, Inc.
v. Chugai Pharmaceuticals Co., LTD. and Genetics Institute, Civil Action No. 87-2617-Y,
numbered AM44 2024650 - AM44 2024652, dated May 19, 1993.

6. Attached as Exhibit 3 is a true and correct copy of an Agreement between Genetics Institute, Inc. and Chugai Pharmaceutical Co. Ltd., numbered AM-ITC 00078873 – AM-ITC 00078923, dated 1984.

7. Attached as Exhibit 4 is a true and correct copy of the first page from the License Agreement between Chugai Pharmaceutical Co. Ltd and Genetics Institute, Inc., numbered AM-ITC 00049907, dated July 5, 1984.

8. Attached as Exhibit 5 is a true and correct copy of a page from Statement of Intent For EPO Technology Development, numbered AM-ITC 00435824.

9. Attached as Exhibit 6 is a true and correct copy of an Agreement between Genetics Institute, Inc. and Chugai Pharmaceutical Co., Ltd., numbered AM-ITC 00435784 – AM-ITC 00435829, dated November 17, 1985.

10. Attached as Exhibit 7 is a true and correct copy of Chapter 3, “The Structure of the Marketplace,” numbered R10-000061367 – R10-000061378.

11. Attached as Exhibit 8 is a true and correct copy of Development and License Agreement between Boehringer Mannheim GMBH and Genetics Institute, Inc., numbered AM-ITC 00119893 – AM-ITC 00119927, dated October 8, 1985.

12. Attached as Exhibit 9 is a true and correct copy of pages from Genetics Institute, Inc.’s Annual Report, numbered AM-ITC 00445788 – AM-ITC 00445791, dated 1985.

13. Attached as Exhibit 10 is a true and correct copy of Genetics Institute, Inc. from 10-K Annual Report, numbered AM-ITC 00789541 – AM-ITC 00789561, dated November 30, 1989.

14. Attached as Exhibit 11 is a true and correct copy of Memorandum and Decision, numbered AM-ITC 00787109 – AM-ITC 00787124, April 19, 1995.

15. Attached as Exhibit 12 is a true and correct copy of Appellants’ and Respondents’ Skeleton Argument, numbered AM-ITC 00789712 – AM-ITC 00789770.

16. Attached as Exhibit 13 is a true and correct copy of exhibit SMO.11 to Affidavit of Steven Michael Odre, numbered AM-ITC 00787125 – AM-ITC 00787126, dated July 21, 1995.

17. Attached as Exhibit 14 is a true and correct copy of selected pages from the Development and License Agreement between Boehringer Mannheim GMBH and Genetics Institute, numbered AM-ITC 00119893 – AM-ITC 00119927, dated October 8, 1985.

18. Attached as Exhibit 15 is a true and correct copy of a hearing transcript, numbered AM-ITC 00809294 – AM-ITC 00809358, dated May 11, 1998.

19. Attached as Exhibit 16 is a true and correct copy of a Affidavit of Laura Joan Deacon, numbered AM-ITC 00789904 – AM-ITC 00789907, July 27, 1994.

20. Attached as Exhibit 17 is a true and correct copy of Request for Further and Better Particulars of the Particulars of Objections, numbered AM-ITC 00790194 – AM-ITC 00790195, dated June 1, 1995.

21. Attached as Exhibit 18 is a true and correct copy of the Complaint filed in the District Court of Delaware, *Genetics Institute v. Amgen*, Civil Action No. 92-56, numbered AM-ITC 00815935 – AM-ITC 00815939, dated January 31, 1992.

22. Attached as Exhibit 19 is a true and correct copy of a letter from the U.S. Department of Commerce – Patent and Trademark Office, numbered AM-ITC 00332531 – AM-ITC 00332533, dated May 9, 1989.

23. Attached as Exhibit 20 is a true and correct copy of Patent Interference No. 102,096, numbered AM-ITC 00816002 – AM-ITC 00816018, dated December 3, 1991.

24. Attached as Exhibit 21 is a true and correct copy of Patent Interference No. 102,097, numbered AM-ITC 00337751 – AM-ITC 00337758, dated December 3, 1991.

25. Attached as Exhibit 22 is a true and correct copy of Amgen's Opening Brief Supporting its Rule 12(C) Motion to Dismiss Plaintiff's Complaint Based on Estoppel, numbered AM-ITC 00816308 – AM-ITC 00816331, dated February 21, 1992.

26. Attached as Exhibit 23 is a true and correct copy of the Complaint filed in the District Court of Delaware, *Genetics Institute v. Amgen*, Civil Action No. 92-57, numbered AM-ITC 00816284 – AM-ITC 00816289, dated January 31, 1992.

27. Attached as Exhibit 24 is a true and correct copy of a Press Release entitled, “Roche acquires Boehringer Mannheim Group,” dated May 26, 1997.

28. Attached as Exhibit 25 is a true and correct copy of Amgen’s Opposition to Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction, Declaration of Michael R. Gottfried in Support of Amgen’s Opposition to Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction and Exhibit B, dated April 25, 2006.

29. Attached as Exhibit 26 is a true and correct copy of Quick Overview of Chugai, numbered R007090626 – R007090636.

30. Attached as Exhibit 27 is a true and correct copy of Press Release entitled, “Roche – Chugai alliance successfully launched,” dated October 1, 2002.

31. Attached as Exhibit 28 is a true and correct copy of Defendants’ Fifth Supplemental Responses and Objections to Plaintiff Amgen Inc.’s First Set of Interrogatories to Defendants (Nos. 9-11), dated May 1, 2007.

32. Attached as Exhibit 29 is a true and correct copy of the Expert Report of Dr. Lowe, dated April 6, 2007.

33. Attached as Exhibit 30 is a true and correct copy of Supplemental Expert Report of Bruce Spinowitz, M.D., dated May 1, 2007.

34. Attached as Exhibit 31 is a true and correct copy of United States Patent No. 4,703,008, dated October 27, 1987.

35. Attached as Exhibit 32 is a true and correct copy of selected pages from Proposed Findings of Fact and Conclusions of Law for the Party Fritsch, numbered AM-ITC 00330523, AM-ITC 00330547, AM-ITC 00330556 – AM-ITC 00330557 and AM-ITC 00330791, dated July 8, 1991.

36. Attached as Exhibit 33 is a true and correct copy of selected pages from Amgen, Inc. 1990 Annual Report, numbered R10-000235803- R10-000235804 and R10-000235812, dated 1990.

37. Attached as Exhibit 34 is a true and correct copy of Amgen, Inc. 1991 Annual Report, numbered R10-001303884 – R10-001303916, dated 1991.

38. Attached as Exhibit 35 is a true and correct copy of Roche – History EPO, numbered R000129538 – R000129541.

39. Attached as Exhibit 36 is a true and correct copy of a Judgment in *Amgen Inc. v. Chugai Pharmaceutical Co and Genetics Institute*, Civil Action 87-2617-Y, numbered AM44 2024650 – AM44 2024652, dated May 19, 1993.

40. Attached as Exhibit 37 is a true and correct copy of selected pages from the deposition transcript of Dr. John Lowe, taken June 25, 2007.

I declare, under penalty of perjury, under the laws of the United States, that the foregoing is true and correct and that this Declaration was completed at Palo Alto, California this 27th day of August 2007.

/s/ William G. Gaede, III
William G. Gaede, III

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the Electronic Case Filing (ECF) system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on the above date.

/s/ Michael R. Gottfried

Michael R. Gottfried