

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.: 05-12237 WGY

PLAINTIFF AMGEN INC.'S MOTION IN LIMINE NO. 25:
EXCLUDE DEPOSITION TESTIMONY FROM A PRIOR LITIGATION OF
TAKAJI MIYAKE, A NON-PARTY WITNESS WHOM ROCHE DID NOT
PREVIOUSLY DISCLOSE

Pursuant to FED. R. EVID. 804, FED. R. CIV. P. 16, 26 and 32, and Local Rule 16.5,
Amgen moves to exclude prior deposition testimony, taken in a prior litigation, of Dr. Takaji
Miyake, a non-party witness that Roche failed to disclose in any pretrial exchanges. The
introduction of the undisclosed testimony will prejudice Amgen because Amgen had no
opportunity to obtain Dr. Miyake's appearance as a witness, nor could Amgen secure rebuttal
testimony. Furthermore, Roche has not demonstrated that Dr. Miyake is "unavailable" in
accordance with FED. R. EVID. 804 or that his prior testimony is otherwise admissible as an
exception to the hearsay rule. Amgen respectfully requests an order excluding Roche's
deposition designations of Dr. Takaji Miyake.

In support of this motion, Amgen submits a brief.

Respectfully Submitted,

AMGEN INC.,
By its attorneys,

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September 6, 2007

CERTIFICATE PURSUANT TO LOCAL RULE 7.1

I certify that counsel for the parties have conferred in an attempt to resolve or narrow the issues presented by this motion and no agreement was reached.

/s/ Michael R. Gottfried

Michael R. Gottfried

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 on the above date.

/s/ Michael R. Gottfried

Michael R. Gottfried