

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

AMGEN INC.,	)	
	)	
	)	Plaintiff,
	)	
v.	)	Civil Action No.: 05 Civ. 12237 WGY
	)	
F. HOFFMANN-LA ROCHE LTD, ROCHE	)	
DIAGNOSTICS GmbH, and HOFFMANN-	)	
LA ROCHE INC.,	)	
	)	Defendants.
	)	
	)	

**DEFENDANTS’ MOTION *IN LIMINE* TO PRECLUDE AMGEN FROM USING  
ALLEGED CLAIM FEATURES TO DISTINGUISH PRIOR ART WHEN THOSE  
CLAIM FEATURES WERE NOT PROVEN TO ESTABLISH INFRINGEMENT**

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Roche”) respectfully request that Amgen Inc. (“Amgen”) be precluded from submitting evidence of—or arguments based on—structural and functional characteristics that allegedly distinguish the pharmaceutical composition of ‘422 claim 1 from the prior art, if, in moving summary judgment of infringement, Amgen did not show that CERA (the active ingredient in Roche’s product, MIRCERA®) has those characteristics.

In support of its motion for summary judgment of infringement of ‘422 claim 1 (D.N. 509), Amgen relied on a perfunctory analysis of whether CERA satisfied the requirements of ‘422 claim 1. However, for its attempt to distinguish the claimed subject matter over the prior art of naturally occurring EPO, Amgen apparently intends to read many more requirements into the claim. Simply put, having obtained summary judgment that Roche infringes ‘422 claim 1 based on a broad interpretation of the claim, Amgen should not be allowed to change the scope of the claim for purposes of the Court’s validity analysis.

In support of its motion, Roche offers the accompanying memorandum of law.

**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 that no agreement could be reached.

Dated: September 10, 2007  
Boston, Massachusetts

Respectfully submitted,

F. HOFFMANN-LA ROCHE LTD,  
ROCHE DIAGNOSTICS GMBH, AND  
HOFFMANN-LA ROCHE INC.

By their Attorneys,

/s/ Keith E. Toms

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**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 (NEF) and paper copies will be sent to those indicated as non registered participants on the above date.

/s/ Keith E. Toms

Keith E. Toms

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