

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

---

AMGEN INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	CIVIL ACTION No.: 05-CV-12237WGY
F. HOFFMANN-LA ROCHE LTD	)	
ROCHE DIAGNOSTICS GmbH	)	
and HOFFMANN-LA ROCHE INC.	)	
	)	
Defendants.	)	

---

**DEFENDANTS’ MOTION *IN LIMINE* TO PRECLUDE PLAINTIFF FROM ARGUING THAT THE GOLDWASSER CLINICAL STUDY IS NOT PRIOR ART**

Defendants’ F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche, Inc. (collectively “Roche”) respectfully move that the Court preclude Amgen from arguing that the Goldwasser clinical study is not prior art. Amgen is likely to raise the same argument in this case — that the Goldwasser clinical study is not prior art because it was allegedly unavailable to the public — as it has in its current litigation against Hoechst Marion Roussel.<sup>1</sup> Issue preclusion, however, prevents Amgen from re-litigating these issues, and doing so would violate the both *stare decisis* and the Court’s rulings in this case. Thus, Defendants request that this Court preclude Amgen from arguing that the Goldwasser clinical study is not prior art.

In support of this motion, Roche submits the accompanying memorandum of law.

---

<sup>1</sup> Civil Action No. 97-10814-WGY D.I. 863 p. 36-37 (Arguing that the Goldwasser clinical study was unavailable to the public because Illinois patient confidentiality law required the results of the study to remain confidential.).

**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

Respectfully submitted,

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

*By their Attorneys*

/s/ Keith E. Toms

Leora Ben-Ami (*pro hac vice*)  
Mark S. Popofsky (*pro hac vice*)  
Patricia A. Carson (*pro hac vice*)  
Thomas F. Fleming (*pro hac vice*)  
Howard S. Suh (*pro hac vice*)  
Peter Fratangelo (BBO# 639775)  
Vladimir Drozdoff (*pro hac vice*)  
David L. Cousineau (*pro hac vice*)  
KAYE SCHOLER LLP  
425 Park Avenue  
New York, New York 10022  
Tel. (212) 836-8000

Lee Carl Bromberg (BBO# 058480)  
Robert L. Kann (BBO# 258025)  
Julia Huston (BBO# 562160)  
Keith E. Toms (BBO# 663369)  
Nicole A. Rizzo (BBO# 663853)  
Kregg T. Brooks (BBO# 667348)  
BROMBERG & SUNSTEIN LLP  
125 Summer Street  
Boston, MA 02110  
Tel. (617) 443-9292  
[ktoms@bromsun.com](mailto:ktoms@bromsun.com)

**CERTIFICATE OF SERVICE**

I certify that, on the above date, 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.

/s/ Keith E. Toms

Keith E. Toms

3099/501 - 736842