

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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

**ROCHE'S MOTION *IN LIMINE* TO PRECLUDE TESTIMONY OF PROPOSED
AMGEN WITNESS NANCY SPAETH BASED ON ADDITIONAL EVIDENCE**

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Dated: Boston, Massachusetts
September 24, 2007

*Counsel for Defendants
F. Hoffmann-La Roche, Ltd,
Roche Diagnostics GmbH, and
Hoffmann-La Roche Inc.*

The defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. respectfully request that Amgen's proposed fact witness Nancy Spaeth be precluded from testifying at trial pursuant to Fed. R. Evid. 602, 402, and 403 for at least the following reasons:

(i) Ms. Spaeth's recently obtained August 29, 2007 deposition testimony confirms that her testimony would violate Fed. R. Evid. 602 and 402, in that she does not know what drug, if any, she received from Dr. Eschbach in 1987 or 1988, and cannot say that she even received recombinant human erythropoietin.

(ii) Ms. Spaeth also confirmed at deposition that she does not know what inventions are claimed in the patents-in-suit and cannot give any relevant testimony regarding those claimed inventions.

(iii) Amgen's opening statement to the jury further confirms that even if Ms. Spaeth could give any relevant testimony (which she cannot as all she can discuss is her own personal health history), it is completely duplicative of the proposed testimony of other Amgen witnesses.

(iv) Any other testimony that Ms. Spaeth might offer concerning her personal health battles is irrelevant to any issue in the case and unfairly prejudicial to Roche.

In support of this motion, Roche submits the accompanying memorandum of law and declaration of Peter Fratangelo.

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: Boston, Massachusetts
September 24, 2007

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). Pursuant to agreement of counsel dated September 9, 2007, paper copies will not be sent to those indicated as non registered participants.

/s/ Keith E. Toms

Keith E. Toms

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