

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
AMGEN INC.,)	
)	
Plaintiff,)	
)	
vs.)	
)	CIVIL ACTION No.: 05-CV-12237WGY
F. HOFFMANN-LA ROCHE LTD,)	
ROCHE DIAGNOSTICS GMBH,)	
AND HOFFMANN-LA ROCHE INC.,)	
)	
Defendants)	
_____)	

ROCHE’S MOTION *IN LIMINE* TO PRECLUDE AMGEN FROM CALLING JEFFREY BROWNE AT TRIAL AFTER FAILING TO PRODUCE HIM FOR DEPOSITION PURSUANT TO SUBPOENA

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively, “Roche”) respectfully move this Court to preclude Amgen from calling Jeffrey Browne, an Amgen employee, as a trial witness for the following reasons:

- Amgen deliberately failed to produce Browne for deposition despite repeated requests, and a subpoena, from Roche for his testimony. Because of its blatant disregard of its discovery obligations -- and contempt of a duly-issued subpoena -- Amgen should be barred from presenting Browne as a trial witness.
- As this Court had made abundantly clear, a party’s failure to provide requested discovery precludes it from presenting evidence concerning the withheld discovery. That rule should apply with particular force here, where Amgen has flouted not only a notice of deposition, but a duly-issued subpoena seeking the deposition of Browne.

In support of this motion, Roche submits the accompanying Memorandum of Law and the Declaration of Manvin Mayell.

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 was reached.

Dated: September 25, 2007
Boston, Massachusetts

Respectfully submitted,

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

By their Attorneys

/s/ Kimberly J. Seluga
Lee Carl Bromberg (BBO# 058480)
Robert L. Kann (BBO# 258025)
Julia Huston (BBO# 562160)
Keith E. Toms (BBO# 663369)
Nicole A. Rizzo (BBO# 663853)
Kimberly J. Seluga (BBO# 667655)
BROMBERG & SUNSTEIN LLP
125 Summer Street
Boston, MA 02110
Tel. (617) 443-9292
kseluga@bromsun.com

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

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/ Kimberly J. Seluga
Kimberly J. Seluga

03099/00501 746347.1