

**IN THE UNITED STATES DISTRICT COURT
IN AND 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.: 1:05-cv-12237 WGY

**DECLARATION OF DEBORAH E. FISHMAN IN SUPPORT OF
AMGEN INC.'S OPPOSITION TO ROCHE'S MOTION *IN LIMINE*
TO PRECLUDE AMGEN FROM CALLING JEFFREY BROWNE AT TRIAL**

I, Deborah E. Fishman, declare as follows:

1. I am a partner with Day Casebeer Madrid & Batchelder LLP and counsel for Amgen, Inc. in the above-captioned matter.

2. I am submitting this declaration in support of Amgen Inc.'s Opposition to Roche's Motion *in Limine* to Preclude Amgen from Calling Jeffrey Browne at Trial.

3. Between March 16, 2007, the date that Roche first revealed its desire to depose Dr. Browne, and April 2, 2007, I was in almost daily contact with Mr. Thomas Fleming or other Roche counsel regarding the scheduling of the remaining depositions.

4. Before March 28, 2007, Mr. Fleming stated in telephone calls with me that Roche was unsure whether it wanted to depose Dr. Browne. Mr. Fleming informed me that Roche wanted to wait until other depositions, and in particular the deposition of Dr. Lin, were completed before finalizing plans with respect to deposing Dr. Browne.

5. Mr. Fleming informed me during a telephone call on March 28 that Roche intended to depose Dr. Browne.

6. On March 28 or March 29, 2007, Mr. Fleming informed me by telephone that Roche intended to serve Dr. Browne with a subpoena and asked if Amgen's counsel would accept service of the subpoena. During that telephone conversation, I informed Mr. Fleming that we had not been able to speak with Dr. Browne to secure representation or his availability for deposition, despite our efforts to do so.

7. I first learned that the subpoena had been served on Dr. Browne on the following Monday, April 2, 2007. This was also the date specified on the subpoena for Dr. Browne's deposition.

8. Attached as Exhibit 1 is a true and correct copy of relevant pages from Amgen's Rule 26(a)(1) Initial Disclosures, served November 6, 2006.

9. Attached as Exhibit 2 is a true and correct copy of relevant pages of the Joint Pre-Trial Memorandum, filed August 10, 2007.

10. Attached as Exhibit 3 is a true and correct copy of emails exchanged between Roche counsel Thomas Fleming and me on April 2, 2007.

11. Attached as Exhibit 4 is a true and correct copy of a March 23, 2007 email from me to Thomas Fleming.

12. Attached as Exhibit 5 is a true and correct copy of a March 28, 2007 email from Thomas Fleming to me.

13. Attached as Exhibit 6 is a true and correct copy of the subpoena served by Roche on Dr. Browne at 7:00 p.m. on Friday, March 30, 2007.

I declare, under penalty of perjury, under the laws of the United States, that the foregoing is true and correct and that this Declaration was completed at Boston, Massachusetts this 26th day of September 2007.

/s/ Deborah E. Fishman
Deborah E. Fishman

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the Electronic Case Filing (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/ Michael R. Gottfried

Michael R. Gottfried