

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

AMGEN, INC.,

Plaintiff,

v.

F. HOFFMANN-LA ROCHE, Ltd, ROCHE  
DIAGNOSTICS GmbH, HOFFMANN-LA  
ROCHE INC.,

Defendants.

Civil Action No. 05-12237 WGY

U.S. District Judge Young

**BENCH MEMORANDUM: DR. BROWNE SHOULD BE PRECLUDED FROM  
TESTIFYING ABOUT THE SPECIFIC CLAIMS OF THE PATENTS-IN-SUIT**

Amgen's witness, Dr. Browne, should be precluded from testifying regarding the scope and validity of any of the claims of the patents-in-suit — including how the claims-in-suit relate to Epogen<sup>®</sup> — because he disclaimed having any knowledge of the subject matter of any of these claims. During his deposition on September 27, 2007, when asked about his understanding, Dr. Browne plainly stated that

I didn't testify that I had some general understanding about the claims; I said I had general knowledge of the patents, of the specification, and I know there's a series of patents with a series of claims; but *my understanding of the claims and how they relate to each other is . . . kind of superficial . . .*

(9/27/07 Browne Tr. (Rough) 28:20-29:3 (emphasis added); *see also* 9/27/07 Browne Tr.

(Rough) 30:11-13 (“I know that there are many claims, they relate to each other in ways that I don't understand or I don't completely follow”)). When questioned further, Dr. Browne testified that he understands that Amgen's patents cover Epogen<sup>®</sup> through the press and that he gained information regarding the patents “from gossip in the hallways” and from “other people's impression of press accounts.” (9/27/07 Browne Tr. (Rough) 35:5-7, 36:4-5, 38:19-20).

Under Rule 602 of the Federal Rules of Evidence, a lay witness — such as Dr. Browne — may not testify to a matter unless he has personal knowledge of that matter. Similarly, because Dr. Browne’s knowledge is borne “from gossip in the hallways” and “other people’s impression,” any such testimony would be inadmissible hearsay. Accordingly, in light of Dr. Browne’s clear admission that he has no personal knowledge of the particular claims-in-suit, their scope or how they relate to each other, he should be precluded from testifying regarding any of the claims-in-suit.

DATED: Boston, Massachusetts  
September 28, 2007

Respectfully submitted,

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

*By their Attorneys,*

/s/ Keith E. Toms  
Lee Carl Bromberg (BBO# 058480)  
Julia Huston (BBO# 562160)  
Keith E. Toms (BBO# 663369)  
Nicole A. Rizzo (BBO # 663853)  
Kimberly J. Seluga (BBO# 667655)  
ROMBERG & SUNSTEIN LLP  
125 Summer Street  
Boston, MA 02110  
Tel: (617) 443-9292  
ktoms@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)  
KAYE SCHOLER LLP  
425 Park Avenue  
New York, NY 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/ Keith E. Toms

Keith E. Toms

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