

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN INC.,)	
)	
Plaintiff,)	
v.)	Civil Action No.: 05 Civ. 12237 WGY
)	
F. HOFFMANN-LA ROCHE LTD, ROCHE)	
DIAGNOSTICS GMBH, and HOFFMANN-)	
LA ROCHE INC.,)	
Defendants.)	
)	
)	

BENCH MEMORANDUM REGARDING BROWNE TESTIFYING ABOUT PREVIOUS LITIGATIONS

During yesterday’s deposition of Jeffrey Browne, Dr. Browne testified that his basis for believing the Lin patent claims covered certain products was because in “previous litigations . . . Amgen’s patents have been upheld, upheld before in jurisdictions other than the United States, upheld against Roche before in the United States,” upheld against “Boehringer-Mannheim GI” “from whom Roche acquired epoietin beta.” (9/27/07 Browne R. Depo. Tr. 32:7-15) He also relied on “previous rounds of litigation where . . . Amgen has prevailed” (9/27/07 Browne R. Depo. Tr. 33:4-10) and testified that it is his understanding “this litigation has gone on for many years, many rounds.” (9/27/07 Browne R. Depo. Tr. 36:3-11).

This Court has already granted Roche’s motion *in limine* to preclude plaintiff Amgen Inc. from asserting outcomes of prior litigations concerning the validity and infringement of certain claims of the patents-in-suit as evidence and attorney argument (D.I. 804). The Court also denied Amgen’s motion *in limine* No. 17 (D.I. 876), finding that Roche was not collaterally estopped from asserting obviousness on the basis of any relationship Roche has with Chugai, GI, or Boehringer Mannheim. To the extent Amgen wishes to circumvent this order by eliciting

testimony regarding previous litigations or his understanding of Roche's relationship to other companies, Amgen should not be allowed. From a former employee, such questions are likely to elicit prejudicial testimony and should be precluded. Likewise, Dr. Browne should be precluded from mentioning the length of litigation or number of previous litigations and from providing testimony to insinuate any contentiousness between the parties as such testimony is both unduly prejudicial under Fed. R. Evid. 403 and irrelevant under Fed. R. Evid. 402.

DATED: Boston, Massachusetts
September 28, 2007

Respectfully submitted,

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

By their Attorneys,

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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
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