

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
AMGEN INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	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 EXCLUDE AMGEN’S OFFER OF PROOF ON  
OBVIOUSNESS-TYPE DOUBLE PATENTING**

Roche submits this motion *in limine* asking the Court to reject Amgen’s offer of proof regarding obviousness-type double patenting. Given that the Court is holding an evidentiary hearing on Roche’s obviousness-type double patenting defenses and given that the Court has not excluded Amgen’s evidence, there is no justification for an offer of proof by Amgen.

F.R.E. 103(a) provides for an “offer of proof” where the Court has made a ruling “excluding evidence.” The Advisory Committee Notes explain that the rule is “designed to resolve doubts as to what testimony the witness would have in fact given, and, in nonjury cases, to provide the appellate court with material for a final disposition of the case in the event of reversal of a ruling which excluded evidence.” Thus, an offer of proof is appropriate only where evidence is excluded. Because, in the instant case, the Court is hearing evidence on obviousness-type double patenting and has not excluded Amgen’s evidence to this point, Amgen’s offer of proof is improper and should be rejected.

**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: October 1, 2007  
Boston, Massachusetts

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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/ Emily J. Schaffer  
Emily J. Schaffer