

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMGEN INC.,)
)
 Plaintiff,)
)
 v.)
)
 F. HOFFMANN-LA ROCHE LTD,)
 ROCHE DIAGNOSTICS GMBH,)
 and HOFFMANN-LA ROCHE INC.,)
)
 Defendants.)

CIVIL ACTION No.: 05-CV-12237WGY

**ROCHE’S MOTION *IN LIMINE* TO PRECLUDE AMGEN FROM INTRODUCING A
DECLARATION OF DR. HARVEY LODISH IN CONNECTION WITH THE HEARING
ON OBVIOUSNESS-TYPE DOUBLE PATENTING**

Roche submits this motion *in limine* asking the Court to preclude Amgen from introducing, in support of its position on obviousness-type double patenting, a declaration of Dr. Harvey Lodish. Dr. Lodish is an Amgen expert who will be testifying in person before the jury.

Plainly, Dr. Lodish’s declaration is inadmissible hearsay under F.R.E. 801(c). Given that the Court is holding an evidentiary hearing on Roche’s obviousness-type double patenting defenses, if Amgen wants to rely on the testimony of Dr. Lodish he should testify in person, subject to cross-examination by Roche. Indeed, the Court has already indicated a preference for live testimony. (Tr. 27-28). In sum, there is simply no justification for allowing Amgen to rely on rank hearsay.

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
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