

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

AMGEN, INC.,

Plaintiff,

v.

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

Defendants.

Civil Action No. 05-12237 WGY

U.S. District Judge Young

**ROCHE'S OPPOSITION TO AMGEN'S MOTION TO SUPPLEMENT TRIAL
EXHIBIT 2011**

Trial Exhibit 2011 is a copy of the prosecution history of the Amgen's U.S. Patent Application No. 113, 178. Notably, the admitted trial exhibit is a copy which Amgen specifically agreed to admit into evidence. Amgen contends that this exhibit includes a declaration of Dr. Strickland, which apparently in the admitted trial exhibit (as well as in the various other versions of the file history that Amgen produced to Roche) contains certain unreadable photographs. Amgen now seeks to supplement the admitted trial exhibit with an alleged duplicate copy of Dr. Strickland's original declaration, which Amgen never produced to Roche.

Roche opposes Amgen's improper attempt to belatedly change Trial Exhibit 2011 by adding an entirely new document containing evidence portrayed in photographs that have previously been unavailable to Roche. As Amgen's counsel admits, this "duplicate" has apparently been in Amgen's possession since the beginning of this case. Amgen had ample

opportunity during discovery to properly produce and authenticate this version of Dr. Strickland's declaration. In particular, there is no evidence or substantiation that Amgen's alleged duplicate is an authentic copy of the declaration which Amgen provided to the Patent Office. Moreover, Roche will be severely prejudiced by being confronted in the middle of trial with new evidence, which only now Amgen claims is necessary to its case. For all the foregoing reasons, Roche respectfully requests that Amgen's motion be denied.

DATED: October 1, 2007

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

By its attorneys,

/s/ Christopher T. Jagoe

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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/ Thomas F. Fleming
Thomas F. Fleming