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UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

| AMGEN, INC., | |
|--|----------------------------------|
| Plaintiff, | |
| v. F. HOFFMANN-LAROCHE LTD., a Swiss Company, ROCHE DIAGNOSTICS GMBH, a German Company, and HOFFMANN LAROCHE INC., a New Jersey Corporation, | Civil Action No. 05 CV 12237 WGY |
| Defendants. | |

PLAINTIFF AMGEN INC.'S MOTION TO ADMIT EXHIBITS INTO EVIDENCE FOR INFRINGEMENT PHASE OF TRIAL

Plaintiff Amgen Inc. ("Amgen") respectfully moves to have certain documents set forth on the attached chart moved into evidence in this case. Plaintiff seeks to admit these documents for the infringement phase of the trial, and requests that they be pre-admitted to streamline the presentation of evidence in this case. For the reasons set forth below they should be admitted into evidence in this matter.

The documents on the attached chart were authored by representatives or employees of the defendants, F. Hoffman-LaRoche Ltd., Roche Diagnostics GMBH and Hoffman LaRoche, Inc. (collectively, "Roche"). These documents do not constitute hearsay because they are admissions of Roche under Fed. R. Evid. 801(d)(2). Pursuant to Fed. R. Evid. 801(d)(2), these documents are "being offered against a party and is (1) the party's own statement, in either an individual or a representative capacity or . . . (D) a statement by the party's agent or servant

Copies of the documents will be provided directly to the Court on Tuesday, October 2, 2007.

concerning a matter within the scope of the agency or employment made during the existence of the relationship." Admissions by a party opponent are excluded from the category of hearsay. *See* Fed. R. Evid. 801(d)(2). Parties are not prejudiced by the admission into evidence of their own statements since the parties may take the stand and contradict the statement if they so choose. *See Globe Sav. Bank, F.S.B. v. United States*, 61 Fed. Cl. 91, 94-95 (2004), judgment entered 65 Fed. Cl. 330 (2005), *aff'd in part, rev'd in part on other grounds*, 189 Fed. Appx. 964 (Fed. Cir. 2006). These documents are relevant because they each constitute evidence of infringement by Roche.

For the reasons set forth above, Amgen moves to have the documents set forth in the attached chart moved into evidence in this case.

Dated: October 2, 2007 Respectfully Submitted,

AMGEN INC., By its attorneys,

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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 no agreement was reached.

> /s/ Michael R. Gottfried Michael R. Gottfried

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 and paper copies will be sent to those indicated as non-registered participants on October 2, 2007.

> /s/ Michael R. Gottfried Michael R. Gottfried