

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 PRECLUDE DR. BENET FROM
TESTIFYING REGARDING ISSUES PERTAINING TO INVALIDITY**

Amgen has indicated it plans to call Dr. Leslie Z. Benet, Ph.D. to testify during its case-in-chief for the infringement phase of the trial. Dr. Benet should be precluded from offering any testimony regarding the opinions set forth in his May 11, 2007 Rebuttal Expert Report because this report was submitted solely in rebuttal to Dr. Spinowitz’s April 6, 2007 report and pertains to Roche’s invalidity defenses.

In accordance with the parties’ agreement, Amgen has disclosed documents and demonstratives it intends to use in conjunction with the testimony of Dr. Benet. It is readily apparent from Amgen’s disclosures that it plans to have Dr. Benet offer opinions set forth solely in his Rebuttal Expert Report, which is directed solely at rebutting Roche’s invalidity defenses. In particular, Amgen has disclosed that Dr. Benet may rely on Trial Exhibit GRN, which is only relied upon in Dr. Benet’s invalidity rebuttal report. Similarly, demonstratives Dr. Benet plans to rely on, including LB10, LB31 and LB30, are only disclosed in connection with his invalidity rebuttal report. As Amgen has already rested its affirmative case on invalidity, it is wholly

inappropriate for Dr. Benet to offer opinions on these matters at this late stage.

Accordingly, Dr. Benet should be precluded from offering any opinions or discussing exhibits or demonstratives that are solely disclosed in connection with his invalidity rebuttal report.

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 was reached.

DATED: Boston, Massachusetts
October 3, 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/ Nicole A. Rizzo

Nicole A. Rizzo

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