

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMGEN INC.,)
)
 Plaintiff,)
)
 v.)
)
 12237WGY)
 F. HOFFMANN-LA ROCHE LTD,)
 ROCHE DIAGNOSTICS GmbH)
 and HOFFMANN-LA ROCHE INC.)
)
 Defendants.)

CIVIL ACTION No.: 05-CV-

ROCHE’S MOTION *IN LIMINE* TO PRECLUDE AMGEN FROM OFFERING ARGUMENTS AND EXPERT TESTIMONY ON OBVIOUSNESS-TYPE DOUBLE PATENTING THAT IT FAILED TO DISCLOSE IN ITS INTERROGATORY RESPONSES AND EXPERT REPORTS

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche, Inc. (collectively “Roche”) respectfully request that, pursuant to Federal Rule of Evidence 702 and Federal Rules of Civil Procedure 26 and 37, Amgen be precluded from offering any opinion or additional evidence on obviousness-type double patenting that was not properly disclosed in Amgen’s interrogatory responses or in Dr. Lodish’s expert reports. In particular, Amgen should be precluded from:

- arguing that the ‘698 and ‘868 claims are patentably distinct merely on grounds that they recite other claim limitations not present in the ‘008 claims
- offering any additional evidence to rebut Roche’s ODP theory 3 beyond its argument that the ‘698 and ‘868 claims are patentably distinct by requiring in vivo biological activity.

In support of this motion, Roche submits the accompanying memorandum of law and declaration of Patricia A. Carson.

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,

/s/ Nicole A. Rizzo
Lee Carl Bromberg (BBO# 058480)
Julia Huston (BBO# 562160)
Keith E. Toms (BBO# 663369)
Nicole A. Rizzo (BBO # 663853)
Kimberly J. Seluga (BBO# 667655)
BROMBERG & SUNSTEIN LLP
125 Summer Street
Boston, MA 02110
Tel: (617) 443-9292
nrizzo@bromsun.com

Leora Ben-Ami (*pro hac vice*)
Mark S. Popofsky (*pro hac vice*)
Patricia A. Carson (*pro hac vice*)
Thomas F. Fleming (*pro hac vice*)
Howard S. Suh (*pro hac vice*)
Peter Fratangelo (BBO# 639775)
KAYE SCHOLER LLP
425 Park Avenue
New York, NY 10022
Tel: (212) 836-8000

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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