

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,
Defendants.
Civil Action No. 05 CV 12237 WGY

PLAINTIFF AMGEN INC.'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE
PORTIONS OF DR. LIN'S TESTIMONY FOR LACK OF PERSONAL KNOWLEDGE

Roche's motion to strike portions of Dr. Lin's testimony does nothing more than raise an
argument that this Court has already considered and rejected on two separate occasions.1 As
Roche's motion does not meet the high standard required for reconsideration, its motion to strike
should be denied.

On September 27, Roche filed a motion in limine to preclude Dr. Lin from testifying
about certain work of which he had personal knowledge and for which he was responsible on the
ground that he had not conducted the work himself.2 In response to questions posed by the
Court, Dr. Lin testified to his then present-sense understanding as to how and what he knew, as
project leader, regarding the EPO project and whether the project had attained its goals.

Following Roche's objection, this Court considered the testimony proffered by Dr. Lin and

1 Additionally, on September 27, 2007, Roche filed a motion in limine on this exact issue. D.I.
1176. This Court did not expressly grant or deny that motion. Dr. Lin was permitted to testify,
and no testimony was elicited by Amgen's counsel regarding the in vitro or in vivo assay
experiments performed by other members of the EPO Project Team.

2 D.I. 1176.

concluded that his testimony may stand.³ Subsequently, at the side bar, Roche further pressed its objection that such testimony was improper. This Court again considered and rejected Roche's argument.⁴

Roche now attempts to have this Court reconsider its decision where none of the requirements for a true motion for reconsideration are met. A motion for reconsideration should be granted "only when the movant demonstrates (1) an intervening change in the law; (2) the discovery of new evidence not previously available; or (3) a clear error of law."⁵ Roche does not and cannot demonstrate that any of these grounds for reconsideration exist. As this issue has been twice considered and rejected, Roche's request for further reconsideration should be denied.

Even assuming that Roche's motion should not be considered as one for reconsideration, it should still fail. As the Court has made clear throughout Dr. Lin's examination, testimony regarding what a person believed at the time of the event is admissible.⁶ The testimony Roche seeks to strike is such evidence. Thus, contrary to Roche's position that there is "clean-up" to be done,⁷ Dr. Lin's present sense impression of the progress and accomplishments of the EPO project over time is not only relevant, but also admissible.

³ 9/27/07 Trial Tr. 1756:15.

⁴ 9/27/07 Trial Tr. 1756:19-1757:21.

⁵ *Davis v. Lehane*, 89 F. Supp. 2d 142, 147 (D. Mass. 2000).

⁶ *See e.g.* 9/27/07 Trial Tr. 1737:6-9

⁷ D.I. 1258 at 3.

October 4, 2007

Respectfully Submitted,
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By its 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 and paper copies will be sent to those indicated as on-registered participants.

/s/ Patricia R. Rich
Patricia R. Rich

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GMBH, a German Company, and)	
HOFFMANN LAROCHE INC., a New)	
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