

UNITED STATES DISTRICT COURT
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-CV-12237 WGY

**ROCHE'S MOTION *IN LIMINE* TO PRECLUDE TESTIMONY BY DR.
VLADIMIR TORCHILIN REGARDING ISSUES PERTAINING
STRICTLY TO INVALIDITY**

Amgen has indicated that it plans to call expert witness Dr. Vladimir Torchilin to testify during its case-in-chief for the infringement phase of the trial. The Court should preclude Dr. Torchilin from offering any testimony regarding the opinions set forth in his Second Expert Report of May 11, 2007 because it was submitted in rebuttal to Dr. Robert Langer's Expert Report of April 6, 2007 and solely pertains to Roche's invalidity defenses and other issues the Court mooted during the invalidity phase of the trial. (*See* D.I. 922 (granted Sept. 4, 2007)). Further, the Court should preclude his utilization of and reliance on various demonstratives concerning invalidity issues during his testimony.

Pursuant to the parties' agreement, on Wednesday evening, October 3, 2007, Amgen disclosed demonstratives it intends to use in conjunction with the testimony of Dr. Torchilin. It is readily apparent from Amgen's evidentiary disclosure that it plans to have Dr. Torchilin offer opinions set forth in his Second Expert Report, which is directed only at rebutting Roche's invalidity defenses as explained by Dr. Langer. The Court's grant in part of Amgen's summary

judgment motion on section 112 validity issues rendered Dr. Langer's testimony on validity issues moot. (D.I. 531). Accordingly, the opinions discussed in Dr. Torchilin's rebuttal expert report, are no longer relevant. In this regard, Amgen has disclosed the following demonstratives, cited only in Dr. Torchilin's validity reports, as exhibits that Dr. Torchilin intends to use in his testimony on infringement: VT50, VT29, VT3, VT45, VT43, VT31, VT33, VT38, VT23, and VT12. Among other things, these exhibits purportedly address whether the Lin patents enable pegylation, and the state of the pegylation art in 1983 and 1984. These demonstratives, together with Dr. Torchilin's entire May 11 report, are completely irrelevant to infringement. As Amgen has already rested its affirmative case on invalidity, it is wholly inappropriate for Dr. Torchilin to backdoor validity evidence during this phase of trial. Such testimony is not timely and will only serve to confuse the jury and should be prohibited under Federal Rule of Evidence 403.

Accordingly, the Court should grant Roche's motion *in limine* precluding Dr. Torchilin from offering any opinions or discussing demonstratives that are disclosed in his Second Expert Report on validity issues.

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: October 4, 2007
Boston, Massachusetts

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

By their attorneys,

/s/ Patricia A. Carson

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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
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