

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

AMGEN, INC.,

Plaintiff,

v.

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

Defendants.

Civil Action No. 05-12237 WGY

**ROCHE'S MOTION *IN LIMINE* TO PRECLUDE DRS. LODISH AND  
TORCHILIN FROM PRESENTING ANIMATIONS NOT DISCUSSED IN THEIR  
EXPERT REPORTS**

Amgen's experts Drs. Harvey Lodish and Vladimir Torchilin have disclosed a series of animations that they intend to present to the jury during their forthcoming testimony on infringement. Drs. Lodish and Torchilin should be precluded from presenting these animations -- by either visual or narrative means -- for the following reasons:

- (i) None of Drs. Lodish and Torchilin's combined nine expert reports contain any discussion of these animations or explanation of how the animations apply to any relevant issue.
- (ii) The Court has consistently prohibited experts from providing any type of narrative or explanation for visual materials unless that same narrative is also found in the expert's reports.

A simple glance at the Lodish and Torchilin expert reports demonstrates that neither expert may present the animations at issue to the jury. Dr. Lodish submitted a total of five expert reports in this case, only two of which -- the April 6, 2007 and May 11, 2007 reports

-- contain any mention of animations at all. In these two reports, Dr. Lodish makes only the most cursory references to animations, providing no description or explanation of their content or how they apply to any of the relevant issues in the case. For example, in the April 6 report, Dr. Lodish states, “I have reviewed graphics and animations depicting computer-modeled representations of peg-EPO, which are attached as Exhibit S, that have been prepared in consultation with me.”<sup>1</sup> Dr. Lodish’s May 11 report contains only the meager mention “...attached as Exhibit L are animations that I may use at trial.”<sup>2</sup> None of Dr. Lodish’s other expert reports even use the word “animation”, much less provide a meaningful narration of the specific animations he intends to use at trial. Likewise, the sole mention in any of Dr. Torchilin’s submissions is in his April 6, 2007 expert report: “I have reviewed graphics and animations depicting computer-modeled representations of peg-EPO, which are attached as Exhibit S, that have been prepared in consultation with me.”<sup>3</sup>

Throughout this trial, the Court has been steadfast in its position that expert witnesses may not narrate demonstratives or other visual materials unless the narration is also found in the expert’s report. There is no reason why Drs. Lodish and Torchilin should not be required to comply with the same standards imposed on other expert witnesses in this case. Accordingly, Drs. Lodish and Torchilin should be precluded from presenting animations that were not discussed in their expert reports.

---

<sup>1</sup> Lodish 4/6/07 Report at ¶102.

<sup>2</sup> Lodish 5/11/07 Report at ¶553.

<sup>3</sup> Torchilin 4/6/07 Report at ¶58.

**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 could be reached.

DATED: October 3, 2007  
Boston, Massachusetts

Respectfully submitted,

F. HOFFMANN-LA ROCHE, LTD,  
ROCHE DIAGNOSTICS GmbH, and  
HOFFMANN-LA ROCHE INC.

By its attorneys,

/s/ Thomas F. Fleming

Leora Ben-Ami (*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, New York 10022  
Tel. (212) 836-8000

and

Lee Carl Bromberg (BBO# 058480)  
Julia Huston (BBO# 562160)  
Keith E. Toms (BBO# 663369)  
Nicole A. Rizzo (BBO# 663853)  
BROMBERG & SUNSTEIN LLP  
125 Summer Street  
Boston, MA 02110  
Tel. (617) 443-9292

**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  
Thomas F. Fleming