

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMGEN INC.,
Plaintiff,
v.
F. HOFFMANN-LA ROCHE LTD., a Swiss
Company, ROCHE DIAGNOSTICS GmbH, a
HOFFMANN German Company, and
HOFFMANN-LA ROCHE INC., a New
Jersey Corporation,
Defendants.
Civil Action No.: 05-12237 WGY

AMGEN INC.'S OPPOSITION TO
DEFENDANTS' MOTION TO ADMIT TRIAL EXHIBIT "NUK" INTO EVIDENCE

Roche's motion to admit "NUK" is a motion for reconsideration in disguise—Roche merely rehashes an argument that has already been denied.1 Roche argued that exhibit "NUK," an article directed at amplification, was relevant to claims 4 and 5 of the '698 patent—which do not address amplification. Roche's motion does not meet the high standard required for reconsideration, and should be denied.

The exhibit is still irrelevant. The article, which addresses amplification, is unrelated to the claims for which it was offered because those claims do not address amplification.2 While Federal Circuit precedent may permit a Court to consider relevant prior art in the context of an ODP inquiry, clearly any "prior art" to be considered must be relevant.

Because Exhibit NUK is not relevant to this Court's ODP inquiry, and Roche's motion does not meet the heightened standard for reconsideration, Amgen respectfully requests that the Court deny Roche's Motion (Docket No. 1276).

1 10/1/07 Tr. of Hr'g in re Obviousness-Type Double Patenting (vol. 1) 18:10 – 18:12.

2 Id. at 15:14 – 16:4.

Dated: October 4, 2007

Respectfully Submitted,

AMGEN INC.,
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 non-registered participants on October 4, 2007.

/s/ Michael R. Gottfried
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