

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

AMGEN'S RESPONSE TO ROCHE'S BENCH MEMORANDUM TO PRECLUDE
AMGEN FROM INTRODUCING BELATEDLY PRODUCED DOCUMENTS
RELATING TO ITS EXPERIMENTS WITH PEGYLATION

Roche's accusations of discovery misconduct are unfounded and unprofessional. Amgen
fully complied with its discovery obligations, producing documents in its possession regarding
the pegylation of EPO at Amgen and, when documents were generated after the fact discovery
cut-off, supplementing its document production with those documents as well.

The Federal Rules provide for the ongoing supplementation of relevant materials.<sup>1</sup>
Amgen fully complied with these rules to meet its ongoing discovery obligations. As Amgen
became aware of additional relevant materials, it supplemented its production. Similarly, as
additional relevant documents were created by Amgen relating to ongoing experimentation, it
supplemented its production. Such supplementation is entirely proper.

Amgen conducts a great deal of ongoing research, and Roche's suggestion that Amgen
deliberately delayed certain experiments is baseless and unwarranted. Roche cites to an email

from one of Amgen's scientists urging that work on a particular project proceed more quickly than was actually achieved, and somehow makes the illogical and unfounded leap to conclude that Amgen deliberately delayed the project because of this ongoing litigation. Roche's argument is pure fantasy.

Finally, Roche's memorandum<sup>2</sup> is also unnecessary because Amgen does not intend to rely at trial upon experiments related to NM 385, in documents Bates numbered AM44 2024375-2024517 and AM87 16859-16917.<sup>3</sup>

### **CONCLUSION**

Roche's memorandum to preclude Amgen is moot in light of the points raised above.

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<sup>1</sup> Fed. R. Civ. P. 26(e).

<sup>2</sup> See Roche's Bench Memorandum to Preclude Amgen from Introducing Belatedly Produced Documents Relating to its Experiments with Pegylation and COS-EPO as Untimely and Prejudicial (Docket No. 1257).

<sup>3</sup> There is no dispute that evidence of earlier PEG-EPO experiments that were produced prior to fact discovery cut-off may be relied upon by Amgen at trial.

Dated October 4, 2007

Respectfully Submitted,

AMGEN INC.,  
By its attorneys,

Of Counsel:

STUART L. WATT  
WENDY A. WHITEFORD  
MONIQUE L. CORDRAY  
DARRELL G. DOTSON  
KIMBERLIN L. MORLEY  
ERICA S. OLSON  
AMGEN INC.  
One Amgen Center Drive  
Thousand Oaks, CA 91320-1789  
(805) 447-5000

/s/ Patricia R. Rich

D. DENNIS ALLEGRETTI (BBO#545511)  
MICHAEL R. GOTTFRIED (BBO#542156)  
PATRICIA R. RICH (BBO#640578)  
DUANE MORRIS LLP  
470 Atlantic Avenue, Suite 500  
Boston, MA 02210  
Telephone: (857) 488-4200  
Facsimile: (857) 488-4201

LLOYD R. DAY, JR. (*pro hac vice*)  
DAY CASEBEER  
MADRID & BATCHELDER LLP  
20300 Stevens Creek Boulevard, Suite 400  
Cupertino, CA 95014  
Telephone: (408) 873-0110  
Facsimile: (408) 873-0220

WILLIAM GAEDE III (*pro hac vice*)  
McDERMOTT WILL & EMERY  
3150 Porter Drive  
Palo Alto, CA 94304  
Telephone: (650) 813-5000  
Facsimile: (650) 813-5100

KEVIN M. FLOWERS (*pro hac vice*)  
MARSHALL, GERSTEIN & BORUN LLP  
233 South Wacker Drive  
6300 Sears Tower  
Chicago IL 60606  
Telephone: (312) 474-6300  
Facsimile: (312) 474-0448

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/s/ Patricia R. Rich

Patricia R. Rich