

**IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE 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.: 1:05-cv-12237 WGY

**AMGEN INC.’S OPPOSITION TO AMGEN’S MOTION IN LIMINE TO PRECLUDE  
DRS. LODISH AND TORCHILIN FROM PRESENTING ANIMATIONS NOT  
DISCUSSED IN THEIR EXPERT REPORTS**

Roche’s motion<sup>1</sup> should be denied because both Drs. Lodish and Torchilin disclosed and discussed in their expert reports the animations of which Roche now complains.

As discussed previously in Amgen’s Bench Memorandum That It Is Appropriate for Dr. Lodish To Use Computer-Modeled Demonstratives That Will Assist the Jury in Understanding His Infringement Testimony,<sup>2</sup> Dr. Lodish’s expert reports fully explained the basis for his use of the animation model,<sup>3</sup> and explained in detail the relevance, methodology and data sources for the depictions in the animation.<sup>4</sup> Thus, Dr. Lodish should be allowed to testify as to all these topics.

Roche has no basis for its assertion that Dr. Torchilin did not discuss animations attached as exhibits in his expert report. Contrary to Roche’s mis-citation of Dr. Torchilin’s expert report,

<sup>1</sup> Roche’s Motion at Docket No. 1290.

<sup>2</sup> Docket No. 1267.

<sup>3</sup> See 10/03/07 Declaration of Daniel A. Curto, Ex. A (Docket No. 1268) Expert Report of Harvey F. Lodish, Ph.D. Regarding Infringement, ¶¶ 102).

<sup>4</sup> See 10/03/07 Curto Decl., Ex. A, ¶¶ 102-104.

in paragraph 58 of his April 6, 2007 Expert Report, Dr. Torchilin made specific references to the attached animations and offered a detailed explanation of their contents.<sup>5</sup> Dr. Torchilin also incorporated by reference all previous graphics and demonstratives in paragraph 5 of his June 1, 2007 Expert Report. Testimony at trial from Dr. Torchilin regarding these animations is squarely within the metes and bounds of his expert reports. As such, the Court should not preclude Dr. Torchilin from presenting these animations by either visual or narrative means, or from referring to screen-shots from these animations.

DATED: October 4, 2007

Respectfully Submitted,

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<sup>5</sup> Paragraph 58 of Dr. Torchilin's April 6, 2007 expert report states "Roche's attachment of a 30 kDa PEG molecule to the amino group at EPO's N-Terminus or at certain Lysines does not materially change the amino acid sequence, the secondary structure, the tertiary structure, or the carbohydrate structure of EPO. I have attached two animations to my report which show PEG attached to EPO, and a comparison of EPO to peg-EPO. (Exs. 136 and 137, 01 8W A\_O.mov; 014wa\_1-h264.mov 4/3/2007.) These animations are representations of the general spatial behavior of PEG and EPO."

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the Electronic Case Filing (ECF) system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on the above date.

*/s/ Michael R. Gottfried*

Michael R. Gottfried