

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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

**AMGEN INC.’S MOTION TO SHIFT BURDEN OF PROOF
FOR ‘349 CLAIM 7 PURSUANT TO 35 U.S.C. § 295**

Amgen hereby moves the Court, pursuant to 35 U.S.C. § 295, to presume that the human EPO product produced in the manufacturing process for Roche’s MIRCERA product is the product of the process claimed in ‘349 claim 7, and to shift the burden of establishing that the product was not made pursuant to ‘349 claim 7 to Roche.

This motion is made on the grounds set forth in the accompanying Memorandum, and in particular on the grounds that Amgen has shown that a substantial likelihood exists that the EPO product produced in the manufacturing process for MIRCERA was made by the process of ‘349 claim 7 and that Roche’s failure to make timely and fulsome production of Roche’s cells and proprietary cell culture medium interfered with Amgen’s reasonable efforts to determine whether Roche’s cells, as used in Roche’s manufacturing process, satisfied the limitation “capable upon growth in culture of producing erythropoietin in the medium of their growth in excess of 100 U of erythropoietin per 10⁶ cells in 48 hours as determined by radioimmunossay.”

Therefore, Amgen requests that the Court instruct the jury as follows:

“You should presume that the human EPO product produced in the manufacturing process for MIRCERA is the product of the process claimed in ‘349 claim 7. With respect to ‘349 claim 7, and ‘349 claim 7 only, it is Roche’s burden to prove by a fair preponderance that its human EPO product is not the product of the process claimed in ‘349 claim 7.”

October 10, 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 on-registered participants.

/s/ Michael R. Gottfried
Michael R. Gottfried