

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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AMGEN INC.,)
)
	Plaintiff,)
)
	vs.)
)
F. HOFFMANN-LA ROCHE, LTD,)
ROCHE DIAGNOSTICS GmbH, and)
HOFFMANN-LA ROCHE INC.,)
	Defendants.)
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Civil Action No.: 05-CV-12237
WGY

SUPPLEMENTAL DEFENDANTS’ PROPOSED FINAL JURY INSTRUCTION

Defendants Hoffmann-La Roche, Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. respectfully request that the Court read the attached Supplemental Final Jury Instruction No. 1 to the jury in addition to the previously submitted Defendants’ Supplemental Proposed Final Jury Instructions, filed October 10, 2007 (D.I. 1343) at the conclusion of trial. Defendants suggest that a logical place for this instruction would be between Instructions 4.14 and 4.15 of D.I. 1343.

Dated: October 14, 2007
Boston, Massachusetts

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

By its attorneys,

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SUPPLEMENTAL FINAL JURY INSTRUCTION NO. 1

FIGURE 6 OF THE PATENTS-IN-SUIT

The sequence shown in Figure 6 of the patents-in-suit has a DNA sequence coding for 166 amino acids. The patent specification states that "the primary structural conformation (amino acid sequence) of mature human EPO as including 166 specified amino acid residues." '933 patent, col. 21, ln. 3-5. Thus, the protein described in Figure 6 cannot be anything other than 166 amino acids.¹

¹ *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1345 (Fed. Cir. 2003); *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 457 F.3d 1293, 1308 (Fed. Cir. 2006).

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