

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMGEN INC.,
F. HOFFMANN-LA ROCHE LTD, a Swiss
Company, ROCHE DIAGNOSTICS
GMBH, a German Company, and
HOFFMANN LA ROCHE INC., a New
Jersey Corporation,
Civil Action No.: 1:05-cv-12237 WGY

AMGEN'S BENCH MEMORANDUM THAT ROCHE SHOULD BE PRECLUDED
FROM RELYING ON COMPARISONS BETWEEN PEG-EPO AND AMGEN'S
ARANESP® PRODUCT BECAUSE SUCH COMPARISONS ARE IRRELEVANT TO
WHETHER PEG-EPO INFRINGES AMGEN'S PATENTS-IN-SUIT

Amgen expects that as part of its infringement defense, Roche will seek to confuse the
jury by comparing Roche's peg-EPO product to Aranesp®, an Amgen product that is not within
the scope of the asserted claims of the Lin patents. Currently pending before the court is
Amgen's Motion in Limine No. 8: Exclude Roche From Relying On Comparisons Between
Roche's Peg-EPO Product and Amgen's Aranesp® Product [Docket Number 841]. Amgen's
Motion in Limine No. 8 is fully briefed and the parties' briefs are attached hereto. As described
in Amgen's papers, comparisons between Roche's peg-EPO and Amgen's Aranesp® are
inadmissible under Federal Rules of Evidence 402 and 403 because such comparisons have no
bearing on whether Roche's product infringes the asserted claims of the Lin patents. The only
relevant comparison is between Roche's product and the claims of the Lin Patents. Accordingly,
Amgen requests that this Court grant its Motion in Limine No. 8 and preclude Roche from
misleading and confusing the jury with irrelevant comparisons between peg-EPO and Aranesp®.

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Respectfully Submitted,

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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