

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

AMGEN, INC.,

Plaintiff,

v.

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

Defendants.

Civil Action No. 05-12237 WGY

**ROCHE'S OPPOSITION TO AMGEN'S MOTION FOR A CORRECTIVE  
INSTRUCTION REGARDING ROCHE'S PATENT ON PEGYLATED  
ERYTHROPOIETIN**

This Court has already considered and rejected each and every argument raised by Amgen in its motion seeking a corrective instruction to the Jury regarding the relevance to infringement of Roche's patent on pegylated erythropoietin. (D.I. 1388; *See* 10/15/07 Electronic Order denying D.I. 824 - Amgen's Motion in Limine No. 1 to exclude Roche from referring to its own patent on pegylated erythropoietin).

Amgen has attempted to show during its infringement case that the chemical reaction employed by Roche in making CERA is routine and straightforward. Roche's patent suggests otherwise. Thus, Amgen's request for an instruction focused on Roche's patent is but a thinly veiled attempt by Amgen to gain the Court's unwarranted assistance in diminishing Roche's patent in the eyes of the jury.

In addition, Roche objects to Amgen's request that the Court characterize Roche's accused product as an "improvement." Roche will show that -- rather than a mere improvement

on an existing product -- MIRCERA is a novel chemical compound materially different from any product or process within the properly defined scope of the patents in suit.

Accordingly, Roche respectfully requests that the Court deny Amgen's request for a corrective jury instruction.

DATED: October 15, 2007

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

By its attorneys,

/s/ Thomas F. Fleming

Leora Ben-Ami (*pro hac vice*)  
Mark S. Popofsky (*pro hac vice*)  
Patricia A. Carson (*pro hac vice*)  
Thomas F. Fleming (*pro hac vice*)  
Howard S. Suh (*pro hac vice*)  
Christopher T. Jagoe (*pro hac vice*)  
Peter Fratangelo (BBO# 639775)  
Krista M. Rycroft (*pro hac vice*)  
KAYE SCHOLER LLP  
425 Park Avenue  
New York, New York 10022  
Tel. (212) 836-8000

and

Lee Carl Bromberg (BBO# 058480)  
Julia Huston (BBO# 562160)  
Keith E. Toms (BBO# 663369)  
Nicole A. Rizzo (BBO# 663853)  
BROMBERG & SUNSTEIN LLP  
125 Summer Street  
Boston, MA 02110  
Tel. (617) 443-9292

**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