

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMGEN INC.,

Plaintiff,

v.

F. HOFFMANN-LAROCHE
LTD., a Swiss Company, ROCHE
DIAGNOSTICS GmbH, a German
Company and HOFFMANN LAROCHE
INC., a New Jersey Corporation,

Defendants.

Civil Action No.: 05-12237 WGY

Nov 7, 2007
YOUNG, D.J.

So ordered as the case management
scheduling order.

Discovery due *May 11, 2007*

Dispositive Motions due *May 15, 2007*

William A. Young
U.S. District Judge

PROPOSED AMENDED LR 16.1(D) JOINT STATEMENT

At the Rule 16.1 Conference with the Court on October 23, 2006, the Court invited the parties to confer and propose any changes to the Court's Rule 16.1 Order within two weeks. At that conference, the Court also scheduled this case to be placed on the running trial calendar for September 2007. The parties have conferred and reached agreement on a number of issues regarding the case management schedule, subject to the Court's approval, with the exception of depositions as discussed below.

The parties respectfully request the following amendments to the currently adopted schedule (the proposed amended dates are in italics and underlined), but all other provisions of the Court's October 27 Order remain in full force and effect:

INITIAL DISCLOSURES AND PLEADINGS		
Initial disclosures and information required by Fed. R. Civ. P. 26(a)(1) shall be exchanged by:	November 6, 2006	No change
All motions to join other parties (other than entities related to the current parties) shall be filed on or before:	November 6, 2006	No change
Roche shall file its Answer and Counterclaims on or before:	November 6, 2006	No change
All motions to amend the pleadings under Fed. R. Civ. P. 15(a) shall be filed on or before:	November 17, 2006	<u><i>December 8, 2006</i></u>
DISCOVERY		
Discovery may commence on:	October 24, 2006	No change
Interrogatories:	A maximum of 40 unique interrogatories shall be permitted for each side. For example, Amgen (collectively with Ortho Biotech Products, L.P., if it is permitted to intervene) may serve the same 40 interrogatories on each of the Defendants, but may not serve 120 unique interrogatories by propounding different interrogatories to the different Defendants. No one interrogatory may require that a party explain its response to	No change

	<p>more than one request for admission. Contention interrogatories may be served at any time during the discovery period, provided that they are served in sufficient time to permit responses to be timely served in accordance with the Federal Rules before the fact discovery cutoff.</p>	
<p>Requests for Admission:</p>	<p>40 unique Requests for Admission</p>	<p>No change</p>
<p>Document Production:</p>	<p>Each party shall:</p> <ol style="list-style-type: none"> (1) propound their initial requests for production of documents no later than October 30, 2006; (2) propound any additional requests for production of documents no later than December 15, 2006; (3) respond and produce documents according to applicable Federal Rules; and (4) complete production of all responsive documents by January 12, 2007. 	<p>Each party shall:</p> <ol style="list-style-type: none"> (1) propound their initial requests for production of documents no later than October 30, 2006; (2) <u>propound up to two additional sets of requests for production of documents to be served at any time but no later than January 8, 2007;</u> (3) respond and produce documents according to applicable Federal Rules; and (4) complete production of all responsive documents (including electronic documents) by <u>February 16, 2007.</u>

All motions to compel must be filed:	Before the close of the applicable discovery period.	No change
Fact discovery shall be completed by:	March 9, 2007 (137 days after the commencement of discovery).	<u>April 2, 2007</u>
Initial reports of experts on issues for which a party bears the burden of proof are due on:	April 2, 2007 (24 days after completion of fact discovery).	<u>April 6, 2007</u>
Rebuttal reports of responding experts are due on:	April 20, 2007 (18 days after serving opening expert reports).	<u>April 27, 2007</u>
Any party desiring to depose an expert witness shall notice and complete said deposition no later than:	April 30, 2007 (10 days after serving rebuttal expert reports).	<u>May 11, 2007</u>
CLAIMS CONSTRUCTION		
Both parties' opening briefs setting forth their respective claims construction positions shall be filed and served no later than:	March 5, 2007 (before service of expert reports).	No change
Both parties' responsive briefs shall be filed and served no later than:	March 19, 2007 (14 days after opening <i>Markman</i> briefs).	No change

	DISPOSITIVE MOTIONS	
Subject to the Court's schedule, a <i>Markman</i> hearing on construction of disputed claim terms shall be held:	Before April 2, 2007 (14 days after last <i>Markman</i> briefs).	No change
Any case dispositive motion pursuant to the Federal Rules of Civil Procedure shall be filed and served with an opening brief on or before:	April 9, 2007 (21 days after last <i>Markman</i> briefs).	<u>May 18, 2007</u>
Any opposition to a case dispositive motion shall be filed and served within:	14 days after service of the motion	No change
Any reply in support of a case dispositive motion shall be filed and served within:	7 days after service of any opposition to such motion.	No change
Hearing on case-dispositive motions shall be held before:	At such time before the Trial Date that is convenient to the Court.	No change
	PRE-TRIAL AND TRIAL	
Trial should commence in Courtroom No. 18, United States Courthouse, One Courthouse Way, Boston, Massachusetts, at 9:00 a.m. EDT on:	September 2007 Running Calendar	No change

The subject of depositions was not addressed in the parties' original Rule 16.1 Statement. While both parties agree that more than ten depositions per side (the default under L.R. is warranted given the issues for discovery in this case, the parties were unable to reach agreement

on the appropriate number or method for calculating deposition discovery. Each party's respective position on deposition discovery is set forth below:

DISCOVERY		
Depositions	<u>105 hours of total deposition testimony per side (including third parties), excluding experts.</u>	<u>15 party depositions, excluding third-parties and experts, and 15 third-party depositions per side, subject to further application to the Court to modify this provision for good causes;</u> <u>Rule 30(b)(6) depositions: all deponents designated pursuant to a single notice shall constitute one witness for purposes of the number of allowed deposition witnesses, but no single deponent will be deposed for more than seven hours without consent of the producing party.</u>

NM

Respectfully submitted,

F. HOFFMANN-LAROCHE, LTD., ROCHE
DIAGNOSTICS GmbH, and HOFFMANN
LAROCHE, INC., Defendants

AMGEN INC., Plaintiff
By its attorneys,

By their attorneys,

/s/ Keith E. Toms

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November 6, 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 and paper copies will be sent to those indicated as non-registered participants on November 6, 2006.

/s/ Keith E. Toms