

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 05-12237 WGY
)	
)	
F. HOFFMANN-LA ROCHE)	
LTD., a Swiss Company, ROCHE)	
DIAGNOSTICS GmbH, a German)	
Company and HOFFMANN-LA ROCHE)	
INC., a New Jersey Corporation,)	
)	
Defendants.)	
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**AMGEN INC.’S MOTION TO DISMISS ROCHE’S COUNTERCLAIMS
COUNTS I — IX AND XII**

For the reasons set forth in its supporting Memorandum, filed herewith, Plaintiff Amgen, Inc. (“Amgen”) respectfully submits this motion to dismiss under FED. R. CIV. P. 12(b)(6) Counterclaims Counts I — IX and XII of Defendants F. Hoffmann-La Roche, Ltd., Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Roche”). In particular, Amgen respectfully requests that the Court order:

1. Roche’s Counterclaims Counts I — IX and XII be dismissed; and
2. Should Roche be permitted an opportunity to amend its Counterclaims, that Roche:
 - a. specify “the who, what, when, where, and how” of all alleged misrepresentations and omissions in the manner set forth in Amgen’s accompanying Memorandum and Amgen’s Memorandum in Support of Amgen’s Motion to Strike Roche’s Affirmative Defenses;
 - b. identify all specific acts upon which Roche bases its inequitable conduct allegations that underlie any of its Counterclaims, in particular

Counterclaim I (Walker Process), Counterclaim II (Sham Litigation), and Counterclaim XII (DJ Unenforceability);

- c. identify all specific acts upon which Roche bases any additional allegations of fraud – beyond its inequitable conduct-related allegations – that underlie any of its Counterclaims, in particular Counterclaim I (Walker Process), Counterclaim II (Sham Litigation), and Counterclaim XII (DJ Unenforceability);
- d. identify all relevant differences, if any, between its current inequitable conduct and fraud-based allegations and those encompassed by *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 126 F. Supp. 2d 69, 141-45 (D. Mass. 2001), *aff'd in pertinent part*, 314 F.3d 1313, 1357-58 (Fed. Cir. 2003);
- e. specify all acts upon which Roche bases its Counterclaim XII; and
- f. cure the additional defects identified in the accompanying Memorandum with regard to Roche's antitrust Counterclaims I-V, and state law Counterclaims VI-IX.

Dated: November 27, 2006

Respectfully Submitted,
AMGEN INC.,
By its attorneys,

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CERTIFICATE PURSUANT TO LOCAL RULE 7.1

I certify that counsel for the Plaintiff has attempted to confer with counsel for the Defendants, F. Hoffman-LaRoche Ltd., Hoffman LaRoche Inc. and Roche Diagnostics GmbH, in an attempt to resolve or narrow the issues presented by this motion and that no agreement could be reached.

/s/ Michael R. Gottfried _____

Michael R. Gottfried

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 27, 2006.

/s/ Michael R. Gottfried _____

Michael R. Gottfried