

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMGEN INC.,
Plaintiff,
v.
F. HOFFMANN-LA ROCHE
LTD., a Swiss Company, ROCHE
DIAGNOSTICS GmbH, a German
Company and HOFFMANN-LA ROCHE
INC., a New Jersey Corporation,
Defendants.
Civil Action No.: 05-12237 WGY

AMGEN INC.'S MOTION TO STRIKE ROCHE'S
AFFIRMATIVE DEFENSES NOS. 2, 7, 8, 10, AND 12

For the reasons set forth in its supporting Memorandum, filed herewith, Plaintiff Amgen Inc. ("Amgen") submits this motion to strike under FED. R. CIV. P. 12(f) the 2nd, 7th, 8th, 10th, and 12th Affirmative Defenses of Defendants F. Hoffmann-La Roche, Ltd., Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively "Roche"). Accordingly, Amgen respectfully requests that the Court order:

- 1. Roche's 2nd, 7th, 8th, 10th, and 12th Affirmative Defenses be stricken; and
2. Should Roche be permitted an opportunity to amend its Answer, 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 Memorandum;
(b) identify all specific acts upon which Roche bases its inequitable conduct defense;

- (c) identify all relevant differences, if any, between its current inequitable conduct 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);
- (d) identify all factual allegations supporting the elements of its unclean hands and patent misuse defenses; and
- (e) state whether, and if so how, its unclean hands and misuse defenses are based on inequitable conduct.

Dated: November 27, 2006

Respectfully Submitted,
AMGEN INC.,
By its attorneys,

Of Counsel:

Stuart L. Watt
Wendy A. Whiteford
Monique L. Cordray
Darrell G. Dotson
MarySusan Howard
Kimberlin L. Morley
AMGEN INC.
One Amgen Center Drive
Thousand Oaks, CA 91320-1789
(805) 447-5000

/s/ Michael R. Gottfried
D. Dennis Allegretti (BBO#545511)
Michael R. Gottfried (BBO# 542156)
Patricia R. Rich (BBO# 640578)
DUANE MORRIS LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210
Telephone: (617) 289-9200
Facsimile: (617) 289-9201

Lloyd R. Day, Jr.
David M. Madrid
Linda A. Sasaki-Baxley
DAY CASEBEER, MADRID & BATCHELDER LLP
20300 Stevens Creek Boulevard, Suite 400
Cupertino, CA 95014
Telephone: (408) 873-0110
Facsimile: (408) 873-0220

William Gaede III
McDERMOTT WILL & EMERY
3150 Porter Drive
Palo Alto, CA 94304
Telephone: (650) 813-5000
Facsimile: (650) 813-5100

Michael F. Borun
Kevin Flowers
MARSHALL, GERSTEIN & BORUN LLP
233 South Wacker Drive
6300 Sears Tower
Chicago, IL 60606
Telephone: (312) 474-6300
Facsimile: (312) 474-0448

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