

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

AMGEN INC.,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No.: 05 Civ. 12237 WGY
	)	
F. HOFFMANN-LA ROCHE LTD, ROCHE	)	
DIAGNOSTICS GmbH, and HOFFMANN-	)	
LA ROCHE INC.,	)	
Defendants.	)	
	)	
	)	

**DEFENDANTS’ MOTION FOR LEAVE TO  
AMEND THEIR ANSWER AND COUNTERCLAIMS**

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Roche”) respectfully move the Court pursuant to Rule 15(a) of the Federal Rules of Civil Procedure for leave to amend their Answer and Counterclaims. For the reasons set forth in Roche’s Memorandum In Opposition To Amgen’s Motion To Strike Roche’s Affirmative Defenses Nos. 2, 7, 8, 10 And 12 And In Support Of Roche’s Motion For Leave To Amend Its Answer And Counterclaims, Roche’s motion for leave to amend should be granted.

**REQUEST FOR ORAL ARGUMENT**

Roche believes that oral argument may assist the Court and respectfully requests that it be heard on its motion.

**CERTIFICATE PURSUANT TO LOCAL RULE 7.1**

I certify that counsel for the parties have conferred in an attempt to resolve or narrow the issues presented by this motion. Amgen does not object to Roche's motion for leave to amend the inequitable conduct sections of the answer and counterclaim, but maintain its position as to other sections. Amgen also maintains their pending motions to strike and dismiss, and reserves the right to strike the amended pleading. As a result, Roche still feels compelled to seek leave of the Court to file the proposed amended pleading.

Dated: December 8, 2006  
Boston, Massachusetts

Respectfully submitted,

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

*By its Attorneys*

/s/ Keith E. Toms  
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  
[ktoms@bromsun.com](mailto:ktoms@bromsun.com)

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

### **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) and paper copies will be sent to those indicated as non registered participants on the above date.

/s/ Keith E. Toms  
Keith E. Toms

584375.1 3099/501