

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

AMGEN'S MOTION TO BIFURCATE ROCHE'S ANTITRUST AND UNFAIR
COMPETITION COUNTERCLAIMS FROM AMGEN'S PATENT
INFRINGEMENT CLAIMS FOR TRIAL AND DISCOVERY AND TO STAY
DISCOVERY ON THOSE CLAIMS

For the reasons set forth in its supporting Memorandum, filed herewith, Plaintiff Amgen, Inc. ("Amgen") respectfully submits this motion to bifurcate under Fed. R. Civ. P. 42(b) the trial and discovery of Roche's antitrust and unfair competition counterclaims from Amgen's patent infringement claims and to stay the discovery on those claims. In particular, Amgen respectfully requests the Court order:

- A. Trial of Roche's Counterclaims Counts I - IX bifurcated and stayed pending the resolution of Amgen's patent infringement claims and Roche's Affirmative Defenses; and
B. All discovery concerning Roche's Counterclaims Counts I - IX bifurcated and stayed pending the resolution of Amgen's patent infringement claims and Roche's Affirmative Defenses.

Dated: December 15, 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/ Patricia R. Rich  
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. (*pro hac vice*)  
DAY CASEBEER, MADRID & BATCHELDER  
LLP  
20300 Stevens Creek Boulevard, Suite 400  
Cupertino, CA 95014  
Telephone: (408) 873-0110  
Facsimile: (408) 873-0220

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

Kevin M. Flowers (*pro hac vice*)  
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/ Patricia R. Rich  
Patricia R. Rich

**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 December 15, 2006.

/s/ Patricia R. Rich  
Patricia R. Rich