

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMGEN INC.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION No.: 05-cv-12237WGY
)	
)	
F. HOFFMANN-LA ROCHE LTD,)	
ROCHE DIAGNOSTICS GmbH, and)	
HOFFMANN-LA ROCHE INC.)	
)	
Defendants.)	
)	
)	

**MEMORANDUM IN SUPPORT OF DEFENDANTS’ EMERGENCY MOTION
TO EXTEND DEADLINE FOR SERVICE OF ADDITIONAL DOCUMENT
REQUESTS FROM JANUARY 8 TO JANUARY 22, 2007**

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Defendants”), respectfully submit this motion to extend the deadline for service of additional document requests from January 8 to January 22, 2007.

Given the extremely short time frame for discovery in this case, it is imperative that the parties exchange documents in an expedited and efficient manner to provide for time to review these documents, so that further document requests, if needed, can be propounded within the allotted time. In order to accomplish this, the parties agreed to begin the exchange of documents the last week of December 2006.

Defendants have taken their obligation to produce documents seriously and to date have produced nearly one million pages of requested documents in this case, in

addition to its production of documents in the related ITC matter. Amgen, on the other hand, has produced a mere thirty-five thousand pages of documents in addition to its ITC production. There are numerous requests for production which Roche has propounded, to which Amgen has stated they will produce documents, and which have not yet been produced. In addition, there are several types of documents which are relevant to the issues in the case and which Amgen has unjustly denied producing, and which Roche will have to move to compel if Amgen continues to fail to produce. With the small number of documents that Amgen has so far produced, and the large number of documents to which Roche is entitled which Amgen has delayed producing or refused to produce, Defendants are unable at this point to determine further, final document requests. Defendants have insisted in several letters to Amgen that Amgen must produce documents immediately, specifically detailing the types of documents which Plaintiff is required to produce and must produce immediately.¹ Amgen still has not made significant production, making it impossible to serve final document requests by January 8.

The Court has ordered that Plaintiff may serve more narrow and focused requests with respect to several categories of documents past the January 8 deadline.² The Court has also ordered that Roche can serve requests with respect to certain categories of documents, including Aranesp® documents beyond the January 8 date.³ The Court has allowed these requests contingent on the adequacy of Amgen's production of Aranesp®

¹ See Dec. 28, 2006 Letter from Peter Fratangelo to Michele Moreland regarding small number of documents provided by Amgen, attached hereto as Ex. A; January 3, 2007 Letter from Peter Fratangelo to Michele E. Moreland regarding Plaintiff's lack of document production, attached hereto as Ex. B; January 4, 2007 letter from Peter Fratangelo to Michele Moreland re: lack of production of Dr. Eugene Goldwasser's materials, attached hereto as Ex. C.

² 1:05-cv-12237-WGY Amgen Inc. v. F. Hoffmann-LaRoche LTD et al "Order on Motion to Compel" [165] 12/29/2006.

³ 1:05-cv-12237-WGY Amgen Inc. v. F. Hoffmann-LaRoche LTD et al "Order on Motion to Compel" [170] 1/3/2007.

documents. Clearly, Roche would need to review what Amgen produces with respect to Aranesp® before determining if additional requests are necessary and what they would request. In the same way, Amgen has not made substantive, or in many cases, any production with respect to a large number of requested documents to which Roche is entitled. Roche must receive production on these issues, or move to compel production from Amgen before it can determine what further, final requests will be necessary.

By producing so few documents, Plaintiff has attempted to stymie the discovery process, and has rendered the January 8, 2007 deadline for further, final document requests an impossibility. We request that the deadline for such final document requests be moved from January 8 to January 22, 2007.

Dated: January 5, 2007
Boston, Massachusetts

Respectfully submitted,

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

By its Attorneys,

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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/ Nicole A. Rizzo
Nicole A. Rizzo

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