

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
AMGEN INC.,)	
)	
Plaintiff,)	
)	
vs.)	
)	CIVIL ACTION No.: 05-CV-12237WGY
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 to add a sham litigation counterclaim (Count 2) and an equitable estoppel affirmative defense (Affirmative Defense No. 12).

At the December 20, 2007 hearing, this Court (A) denied Amgen’s motion to strike Roche’s Affirmative Defenses Nos. 2, 7, 8, and 10¹; (B) granted, *without prejudice*, Amgen’s motion to strike Roche’s affirmative Defense No. 12; (C) denied Amgen’s motion to dismiss Counterclaim Counts 1 and 6; (D) took under advisement Amgen’s motion to dismiss Counterclaim Counts 3, 4, 5, 7, 8, and 9; (E) granted, *without prejudice*, Amgen’s motion to

¹ At the December 20, 2007 hearing, the Court stated that the “motion to strike affirmative defenses 1, 2 and 3 is denied.” Amgen did not move to strike Roche’s affirmative defenses 1 (failure to state a claim) and 3 (non-infringement). Based on the underlying motion and opposition papers, Roche understands that the Court was referring to the first 3 affirmative defenses that Amgen sought to strike, which were defenses Nos. 2 (patent misuse), 7 (inequitable conduct), and 8 (unclean hands), and seeks confirmation of this by the Court.

dismiss Counterclaim Count 2, and permitted Roche to move for leave to amend its pleading with respect to Counterclaim Count 2 and Affirmative Defense No. 12, within 30 days of the Order.

For the reasons set forth in Roche's accompanying Memorandum, Roche's motion for leave to amend to add Counterclaim Count 2 and Affirmative Defense No. 12 should be granted.

CERTIFICATE PURSUANT TO LOCAL RULE 7.1

I hereby certify that counsel for Roche conferred with counsel for Amgen Inc. in a good faith effort to resolve or narrow the issues presented by this motion and that no agreement could be reached.

Dated: January 19, 2007
Boston, Massachusetts

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, due to the federal holiday, paper copies will be sent to those indicated as non-registered participants on the above-referenced date.

/s/ Keith E. Toms
Keith E. Toms

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