

# EXHIBIT D

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January 8, 2007

**VIA EMAIL & FAX**

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***Re: Amgen, Inc. v. F. Hoffmann-La Roche, Ltd., et al.***

Dear Deborah:

Pursuant to our agreement of January 3, 2007, enclosed are Roche's supplemental responses to Amgen's Requests for Admission. For the reasons set forth in my letter to you dated January 3, 2007, we continue to disagree with Amgen's position that Roche's original responses to Amgen's complex, ambiguous requests were inadequate. However, in light of Amgen's clarification of its definition for RO-050382 and our meet and confer discussions, in the spirit of cooperation Roche hereby supplements its original responses.

As you know, Amgen has taken issue with Roche's responses to requests 18-21, which purport to request facts relating to the cell line used by Roche. In our discussions, you have taken the position that at minimum, unless Roche admits to these requests Amgen is entitled to a sample of Roche's cell line. Your letter dated January 5, 2007, seeks to create the mistaken impression that Roche has acknowledged the relevance of its cell line to this action. This is incorrect. As is clear in Roche's original and supplemental responses to Amgen requests 18-21, any relevant factual information regarding the properties of the cell line used by Roche is set forth in Roche's BLA, which Amgen has had access to since June 2006.

Based on our discussions and as confirmed in your letter dated January 5, 2007, the only information regarding Roche's cell line that Amgen contends that it cannot derive from Roche's BLA is whether or not Roche's cell line meets the claim limitation "capable upon growth in culture of producing EPO in the medium of their growth in excess of 100U of erythropoietin per 10<sup>6</sup> cells in 48 hours as determined by radioimmunoassay." As set forth in our original and supplemental responses to Amgen's request No. 21, due to the ambiguous and scientifically inaccurate nature of this request, it cannot be answered through any means, including testing of Roche's cell line. Specifically, although not yet construed by the Court, it is Roche's contention

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that the phrase as used in the claims is indefinite, cannot be properly defined in view of the patent specification and is otherwise scientifically inaccurate, as radioimmunoassay alone cannot measure erythropoietin units ("U") as required by the claim phrase. Amgen has not defined what "100U" is and has not provided any protocol to determine whether any sample meets this language. Roche has searched the specification of the patents-in-suit and cannot find a relevant, disclosed protocol. If Amgen provides information as to the meaning of this request, Roche will reconsider whether it can respond further.

Very truly yours,



Patricia Carson

cc: Thomas F. Fleming, Esq.  
Howard S. Suh, Esq.  
Julia Huston, Esq.  
Patricia R. Rich