

DAY CASEBEER
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January 26, 2007

VIA EMAIL & FACSIMILE

Pat Carson, Esq.
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022-3598

Re: *Amgen Inc. v. F. Hoffmann La-Roche Ltd., et al. (05-CV-12237 WGY)*

Dear Pat:

I write in response of your letter to me of January 24, in which you seek to stall Roche's production of its cell line, as ordered by the Court, by trying to predicate such production on Amgen's reciprocal production of its cell lines.

Your letter ignores the fact that Amgen has already made a reciprocal production to Roche, and made that production *many months ago*. As you know, Amgen moved the Court to order Roche to produce its cell line because Roche had failed to produce discovery on the EPO production levels of its cell line(s) used to make the EPO starting material for its accused product as measured by RIA and because Roche had failed to admit those production levels in response to Requests for Admission.

By contrast, Amgen has already produced this reciprocal discovery to Roche with respect to *its own* EPO-producing cell lines. Namely, Amgen has produced regulatory filings and laboratory notebooks that demonstrate that its EPO-producing cell lines meet the production level requirements of its '349 Patent claims. This is precisely the information that Roche has either failed to or simply refused to produce to Amgen thus necessitating Amgen's motion to compel production of its cell lines. Moreover, Amgen produced this discovery *months ago* in the related ITC action. See, e.g., AM-ITC 00603057-058, AM-ITC 00603150-152, AM-ITC 00737653-667, Egrie LNB 633 (AM-ITC 00051541-629), Egrie LNB 986 (AM-ITC 00051422-540), Egrie LNB 723 (AM-ITC 00134726-859), Smalling LNB 623 (AM ITC 00970701-801), Smalling LNB 903 (AM ITC 00970905-983), and Trail LNB 1044 (AM-ITC 00080653-751).

Any attempt by Roche to try to now use Judge Young's Order as a basis to delay the production of its cell line is baseless and will be viewed as bad faith.

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Finally, your objection to supplying Roche's cell line to Dr. McLawhon, who has not been (and is unlikely to be) subpoenaed in this action, based on an affiliation with the University of Chicago is without merit. As you know, Dr. McLawhon has agreed to abide by the access parties' Protective Order, which Judge Young endorsed as providing ample protection for Roche's cell line in his January 23 Order.

As set forth in my letter to you of January 23, Roche should produce its cell line and related documents forthwith and in any event no later than February 2, 2007.

Very truly yours,

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Deborah E. Fishman

DEF:rlp

cc: Howard Suh
Thomas Fleming
Michele McCreland
Mark Israelewicz