

DAY CASEBEER  
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January 5, 2007

VIA EMAIL & FACSIMILE

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

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

Dear Pat:

I write to respond to your letter to me of yesterday and to summarize our conversation of earlier today.

First, in response to your letter, I write to dispel any suggestion that Roche does not understand the relevance of its cell line(s) to issues in this case. Roche's cell line(s) is clearly relevant to identifying whether Roche's accused cells meet each limitation of Amgen's asserted claims, particularly the EPO production requirements of the claims of the '349 patent. Based on our discussion of earlier today I assume that you understand the relevance of Roche's cell line and it is on this basis that you are trying to find an accommodation to provide Amgen with relevant information without producing the cell line itself.

In that regard, this morning I proposed that if Roche admits (or is willing to stipulate) that its EPO production cell line is capable of producing in excess of 1000 units of EPO per  $10^6$  cells in 48 hours as determined by RIA and if Roche admits Amgen's Requests for Admission Nos. 18-21 (with the understanding that Roche may wish to preserve certain objections), Amgen would agree to withdraw its request for production on Roche's cell line(s) themselves. I would note that if we are able to reach agreement on this matter, Amgen would still reserve the right to request the cell line in the event Roche raises a defense that would require Amgen to test the cell line in order to respond.

We agreed to speak later today to determine whether Roche would agree in principle to stipulating to the production levels in RIA units and, if so, we would work over the weekend and on Monday to prepare acceptable language to withdraw Roche's denials to Amgen's RFAs 18-21.

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Please let me know if you disagree with my characterization of our discussion.

Very truly yours,

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MADRID & BATCHELDER LLP



Deborah E. Fishman

DEF:rlp

cc: Howard Suh  
Thomas F. Fleming  
Michele Moreland  
Mark Israelewicz