

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

DEFENDANTS' MOTION TO AMEND THEIR SIXTH AFFIRMATIVE DEFENSE

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively "Defendants") respectfully move the Court for leave to amend their double patenting affirmative defense (Sixth Affirmative Defense).¹ Defendants specifically seek leave to amend their double patenting defense to add as separate grounds U.S. Patent No. 4,667,016, which is also owned by Amgen and was prosecuted by Amgen during the same time period as the six patents in suit, and U.S. Patent Nos. 5,441,868 ("the '868 patent") and 5,618,698 ("the '698 patent"), which are two of the patents-in-suit. As amended, the defense would read as follows (new text underlined):

Sixth Defense - Double Patenting

37. The claims of the '868, '933, '698, '080, '349 and '422 patents are invalid for double patenting over claims of Amgen's earlier issued and now expired U.S. Patent No. 4,703,088 ("the '008 patent") and U.S. Patent No. 4,667,016; and the claims of the

1 Defendants' Motion For Leave To Amend Their Answer And Counterclaims that was filed with this Court on January 19, 2007 is still pending.

'349, '933, '080, and '422 patents are invalid for double patenting over the claims of the '868 and '698 patents.

Defendants anticipate that adding these grounds to their double patenting defense will not affect any previously ordered deadlines or delay trial. In support of this motion, Defendants rely on the memorandum submitted herewith.

CERTIFICATE PURSUANT TO LOCAL RULE 7.1

I certify that counsel for the parties have conferred in an attempt to resolve or narrow the issues presented by this motion and no agreement was reached.

Dated: March 2, 2007
Boston, Massachusetts

Respectfully submitted,

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

By their Attorneys,

/s/ Julia Huston
Lee Carl Bromberg (BBO# 058480)
Julia Huston (BBO# 562160)
Keith E. Toms (BBO# 663369)
Nicole A. Rizzo (BBO# 663853)
Bromberg & Sunstein LLP
125 Summer Street
Boston, MA 02110
Tel. (617) 443-9292
jhuston@bromsun.com

Leora Ben-Ami (*pro hac vice*)
Mark S. Popofsky (*pro hac vice*)
Patricia A. Carson (*pro hac vice*)
Thomas F. Fleming (*pro hac vice*)
Howard S. Suh (*pro hac vice*)
Peter Fratangelo (BBO# 639775)
Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
Tel. (212) 836-8000

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/ Julia Huston
Julia Huston

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