

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
AMGEN INC.,)	
)	
Plaintiff,)	
)	C.A. NO.: 05-12237-WGY
v.)	
)	
F. HOFFMANN-LAROCHE)	
LTD., a Swiss Company, ROCHE)	
DIAGNOSTICS GmbH, a German)	
Company and HOFFMANN LAROCHE)	
INC., a New Jersey Corporation,)	
)	
Defendants.)	
_____)	

**PLAINTIFF AMGEN INC.’S OPPOSITION TO ROCHE’S
MOTION TO AMEND ITS SIXTH AFFIRMATIVE DEFENSE**

Amgen Inc. (“Amgen”) opposes Roche’s Motion to Amend its Sixth Affirmative Defense because Roche has no reasonable basis for not including the new allegations of its proposed amended Sixth Affirmative Defense in its original answer or its First Amended Answer attached as Exhibit A to Roche’s Motion for Leave to File an Amended Answer and Counterclaim, which was filed on January 19, 2007.¹

The patents upon which Roche now seeks to rely in support of its obviousness-type double patenting defense are neither new patents nor newly discovered patents. Indeed, as Roche asserts, two of the patents are already the subject of this litigation, and the third is a 1987 issued patent cited in the prosecution histories of some of the patents that are the subject of this litigation. Therefore, Roche was aware of these patents long before it filed both its Answer and First Amended Answer and could have included these allegations at either time. Without even

¹ On February 2, 2007, Amgen filed an opposition to Roche’s Motion for Leave to File an Amended Answer and Counterclaim. The Court has not yet ruled on this motion.

any attempted justification or reasoning for this amendment proposed in the midst of fact discovery and over a year after this suit began, Roche's motion should be denied.

If, however, the Court is inclined to grant Roche's motion and allow amendment of Roche's Sixth Affirmative Defense, Amgen respectfully requests that the allowance be conditioned upon precluding Roche from seeking additional time for discovery. Roche argues as a basis for allowing its motion that the amendment will not prejudice Amgen because it will not prolong the discovery period in this case. Roche should be held to this position. Therefore, in the event this Court denies Amgen's opposition and grants Roche's motion to amend, Amgen respectfully requests that the Court's Order include a provision that precludes Roche from extending the discovery period for purposes of pursuing discovery on this newly raised affirmative defense.

Dated: March 16, 2007

Respectfully Submitted,

AMGEN 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 and paper copies will be sent to those indicated as non-registered participants on March 16, 2007.

/s/ Patricia R. Rich

Patricia R. Rich