

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 FOR LEAVE TO REPLY IN OPPOSITION TO
AMGEN INC.'S CLAIMS CONSTRUCTION BRIEF**

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively "Roche") respectfully submit this Motion For Leave To Reply in Opposition to Amgen Inc.'s Claims Construction Brief. Roche's proposed reply brief is attached hereto.

In support of this motion, Roche states that a reply is necessary because Amgen submitted the vast majority of its proposed claim constructions for the first time in Amgen, Inc.'s Response to Defendants' Claim Construction Brief, filed with the Court on March 19, 2007 (Docket No. 323), and not in Amgen's opening Claims Construction Brief, filed with the Court on March 5, 2007 (Docket No. 312). Roche wishes to respond to Amgen's proposed claim constructions, and will be deprived of an opportunity to do in the absence of a reply. Roche's

proposed reply brief is limited to the new issues raised in Amgen's responsive brief, is concise, and will be of assistance to the Court.¹

Prior to bringing this motion, Roche initiated a conference with Amgen regarding the filing of replies, and suggested that both parties simultaneously file papers, thus ensuring fairness and preventing one party from filing a sur-reply. Amgen rejected this offer. As a result, in the event Amgen should move the Court for leave to respond to Roche's proposed reply, that motion would be in bad faith and should be denied.

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 28, 2007
Boston, Massachusetts

Respectfully submitted,

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

By their Attorneys

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¹ Roche's proposed reply brief is attached, but the exhibits cited in the reply brief are not included at this time. If the Court grants the instant motion, Roche will file its reply brief with exhibits.

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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 (NEF) and paper copies will be sent to those indicated as non registered participants on the above date.

/s/ Nicole A. Rizzo
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