

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN INC.,)	
)	
Plaintiff,)	
)	Civil Action No.: 05 Civ. 12237 WGY
v.)	
)	
F. HOFFMANN-LA ROCHE LTD, a)	
Swiss Company, ROCHE DIAGNOSTICS)	
GmbH, a German Company, and)	
HOFFMANN LA ROCHE INC., a New)	
Jersey Corporation,)	
)	
Defendants.)	

**AMGEN’S RENEWED MOTION FOR AN EXTENSION OF TIME TO SERVE ITS EXPERTS’ REPORTS
REGARDING TESTING OF ROCHE’S LATE-PRODUCED CELL LINE**

Plaintiff Amgen Inc. ("Amgen") respectfully renews its request that this Court grant an extension of time for it to supplement its Fed. R. Civ. P. 26(a)(2)(B) expert reports to address experiments measuring the erythropoietin production levels of the recently-received Roche DN2-3a3 cell line, which is relevant to the issue of Roche’s infringement of the claims of United States Patent No. 5,756,349.

After more than four months of refusing to comply with Amgen’s repeated requests for its cell line, and after being twice ordered to comply with this Court’s Orders, Roche finally produced a sample of its cell line to Amgen on March 21, 2007. That left Amgen’s expert witnesses with little more than two weeks to grow and test those cells and prepare and serve initial expert reports (i.e., by this Friday, April 6, 2007)¹ addressing the EPO-production levels of

¹ Initial reports on issues on which a party bears the burden of proof are due on April 6, 2007. Case Management Scheduling Order, Docket No. 143, at 4.

those cells. Because Roche's refusal to comply with its discovery obligations and this Court's orders prevented Amgen from timely preparing and serving expert reports on this one issue, Amgen needs an extension of time to supplement expert reports on that issue.

In its February 23, 2007 motion to enforce the Court's January 23, 2007 Order,² Amgen explained that Roche had already deprived it of the necessary time to grow and test Roche's cells, and therefore requested (in addition to enforcement of the Court's earlier Order compelling Roche to produce its cells) an extension of time to submit its expert reports on this issue.³ The Court terminated Amgen's motion to enforce (as well as Roche's cross-motion to compel Amgen to produce its cell lines) on February 27, 2007, and ordered the parties to produce their respective cell lines within thirty days.⁴ However, the Court did not address Amgen's request for additional time to serve its opening expert reports on this issue.

Amgen renews that request for an extension of time. The grounds for this renewed motion are more fully set forth in the accompanying *Memorandum in Support* filed herewith.

² Docket Nos. 293 & 294 ("Amgen Inc.'s Motion To Enforce The Court's January 23, 2007 Order Compelling Roche To Produce Its Cell Line And To Extend The Time For Amgen To Submit Its Infringement Expert Report Regarding The Testing Of Roche's Dn2-3(A)3 Cell Line & Memorandum In Support.").

³ Docket No. 294, at 3 ("Additionally, since Roche's unjustified delay of production has deprived Amgen of virtually all of the time originally allotted for expert discovery on this issue, Amgen respectfully requests that the Court allow Amgen two additional weeks to complete its infringement expert report.") and 8-9 ("Amgen respectfully requests that the Court . . . grant Amgen two additional weeks (until April 20, 2007) to submit its infringement expert report regarding the testing of Roche's DN2-3(a)3 cell line").

⁴ Docket No. 298 ("Modified Order Regarding Production of the Parties' Cell Lines And Applicable Restrictions of Use.").

DATED: April 6, 2007

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Respectfully Submitted,

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CERTIFICATE PURSUANT TO LOCAL RULE 7.1

I certify that on April 6, 2007, counsel for the parties conferred in an attempt to resolve or narrow the issues presented by this motion, and no agreement was reached.

/s/ Michael R. Gottfried
Michael R. Gottfried

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the Electronic Case Filing (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/ Michael R. Gottfried
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