

DAY CASEBEER
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April 13, 2007

VIA FACSIMILE AND E-MAIL

Peter Fratangelo
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022-3598

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

Dear Peter:

I write regarding a large number of documents referenced in Roche's expert reports that have not been produced in accordance with the January 26, 2007 Stipulated Order Regarding Expert Discovery.

Under ¶ 1 of the Stipulated Order, the parties agreed to either "identify (including by Bates number where available) or, if the document is not already in the possession of the opposing party, produce a clean copy of those documents that the experts relied on or considered" in preparing or rendering their opinions. Email correspondence between Tom Fleming at Kaye Scholer and Deborah Fishman at Day Casebeer set forth the logistics for the exchange. In substance, we agreed to exchange expert reports by Friday, April 6 at 6:00 PM (PDT), and to deliver all "materials considered or relied on (and not previously produced)" by Monday, April 9.

There remain a large number of items cited in Roche's expert reports that have not been produced. Similarly, a number of the citations included in Roche's expert reports are either so grossly inadequate that we cannot determine whether the items were produced, or a pin cite is necessary to ascertain whether the materials support that expert opinion. See attached Appendix 1 for a list of these items.

Roche's failure to produce these items in accordance with the Stipulated Order and the parties' logistic agreement is highly prejudicial to Amgen and prevents Amgen from effectively responding to Roche's numerous expert reports. As you know, the 21 days afforded for rebuttal reports assumed that we would have Roche's expert reports and all of the cited material timely. One-third of Amgen's time to respond to Roche's reports has already elapsed. Please produce all items listed in Appendix 1 immediately.

In addition, please immediately produce the document bearing production numbers R000401389-396. Dr. Langer relied upon this document in ¶ 61 of his expert report dated April 6, 2007, and indicated that he reviewed this document in preparing his report. We are not in possession of this document, as it was recalled on January 16, 2007 based on a claim that it was inadvertently produced and subject to attorney-

Exhibit 1

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client privilege (*See* 1/16/07 letter from P. Fratangelo to D. Fishman attached as Appendix 2). By providing this document to Dr. Langer, and permitting Dr. Langer to rely on this document in forming his opinion, Roche waived any claim of privilege. Please immediately re-produce this document in accordance with the Stipulated Order Regarding Expert Discovery, and withdraw any claim of privilege. This waiver applies to the additional copies of the document that were initially produced and subsequently recalled (*See* 1/21/07 letter from P. Fratangelo to D. Fishman attached as Appendix 3). As such, confirm that Roche's claim of privilege related to R000400943-950 and R000391541-549 has been withdrawn, and immediately re-produce these documents.

Thank you in advance for your prompt attention to this matter.

Regards,

DAY CASEBEER
MADRID & BATCHELDER LLP


Aaron R. Hand

ARH:pr

Enclosures

cc: Tom Fleming, Esq.
Howard Suh, Esq.
Michele Moreland, Esq.
Mark Israelewicz, Esq.