

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN INC.,)	
)	
Plaintiff,)	
v.)	Civil Action No.: 05 Civ. 12237 WGY
)	
F. HOFFMANN-LA ROCHE LTD, ROCHE)	
DIAGNOSTICS GmbH, and HOFFMANN-)	
LA ROCHE INC.,)	
Defendants.)	
)	
)	

**DEFENDANTS’ MOTION TO STRIKE INFRINGEMENT ALLEGATIONS IN
AMGEN’S EXPERT REPORTS ON WHICH AMGEN DID NOT PROVIDE
DISCOVERY AND TO PRECLUDE TESTIMONY**

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Roche”) respectfully submit this motion to strike portions of the expert reports of Drs. Lodish, Torchilin, and Katre that relate to the predictability and complexity of chemical reactions of compounds other than EPO through pegylation, and to preclude Amgen’s experts from offering such opinions and testimony at trial. Amgen previously argued, and then persuaded the Court to rule, that pegylation with non-EPO molecules was not relevant to this litigation. Amgen used that position and ruling to deny Roche any discovery into Amgen’s own acknowledged work and experience regarding chemical reactions of compounds other than EPO through pegylation. That work, Roche contends, would be contrary to and belie the opinions now offered by its experts.

Now after Roche has been denied discovery into these topics, Amgen seeks to introduce expert testimony to support its infringement allegations that relies on precisely the information that it once claimed irrelevant. Amgen’s earlier position on this topic should preclude it from

offering testimony on the application of pegylation to non-EPO molecules, especially since Roche has been prejudiced by being denied the discovery it required to develop evidence (which is indisputably in Amgen’s position) to rebut Amgen’s contentions.

Thus, Roche respectfully requests that the following paragraphs of the expert reports of Drs. Lodish, Torchilin, and Katre, which relate to pegylation involving non-EPO molecules, be stricken, and Amgen’s experts not be permitted to testify on these topics at trial:

Expert Report	Paragraphs to be Stricken
Harvey F. Lodish	62, 184
Vladimir P. Torchilin	28, 30, 32, 33, 65, 73, 78, 82-89, 91, 95, 96, 109-111
Nandini Katre	3-5, 16-18, 29-30, 39-40

In support of this motion, Roche submits a memorandum of law and the Declaration of Alfred H. Heckel.

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 that no agreement could be reached.

Dated: April 30, 2007
Boston, Massachusetts

Respectfully submitted,

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

By their Attorneys

/s/ Keith E. Toms

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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/ Keith E. Toms