

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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AMGEN INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 F. HOFFMANN-LA ROCHE LTD; )  
 ROCHE DIAGNOSTICS GmbH; and )  
 HOFFMANN-LA ROCHE INC. )  
 )  
 Defendants. )

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CIVIL ACTION No.: 05-CV-12237WGY

**ORAL ARGUMENT REQUESTED**

**DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT  
THAT THE CLAIMS OF PATENTS-IN-SUIT ARE INVALID FOR DOUBLE  
PATENTING OVER AMGEN ‘016 PATENT**

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche, Inc. (collectively “Roche”) submit this motion for summary judgment that the claims of the patents-in-suit are all invalid for obviousness-type double patenting over claim 10 of Amgen’s earlier-issued and now-expired U.S. Patent No. 4,667,016 (“the ‘016 patent”).

Claim 10 of the ‘016 patent is directed to the harvesting of purified “recombinant erythropoietin from a mammalian cell culture supernatant fluid,” and this recombinant erythropoietin is the product that is the subject of Amgen’s patents-in-suit. Thus, the processes, proteins, compositions, and uses of rEPO in treatments described in the asserted claims are just a rewording or obvious variation of the process claims of the ‘016 patent. Indeed, past positions taken by Amgen and its experts—and adopted by the courts and the United States Patent and Trademark Office—underscore the invalidity of the claims-in-suit for obviousness-type double patenting over the ‘016 patent.

Thus, Roche respectfully asks this Court to grant its motion for summary judgment that the claims of the patents-in-suit are invalid for double patenting over claim 10 of the '016 patent. In support of this motion, Roche submits the accompanying memorandum of law, the Declarations of Dr. Edward Everett Harlow, Jr., Michael Sofocleous, and Kimberly J. Seluga, and a Rule 56.1 Statement of Undisputed Material Facts.

**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.

/s/ Nicole A. Rizzo  
Nicole A. Rizzo

Dated: June 12, 2007  
Boston, Massachusetts

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

By their attorneys,  
  
/s/ Nicole A. Rizzo  
Lee Carl Bromberg (BBO# 058480)  
Timothy M. Murphy (BBO# 551926)  
Julia Huston (BBO# 562160)  
Keith E. Toms (BBO# 663369)  
Nicole A. Rizzo (BBO# 663853)  
BROMBERG & SUNSTEIN LLP  
125 Summer Street  
Boston, MA 02110  
Tel. (617) 443-9292  
[nrizzo@bromsun.com](mailto:nrizzo@bromsun.com)

Leora Ben-Ami (*pro hac vice*)  
Patricia A. Carson (*pro hac vice*)  
Thomas F. Fleming (*pro hac vice*)  
Howard S. Suh (*pro hac vice*)  
Christopher T. Jagoe (*pro hac vice*)  
KAYE SCHOLER LLP  
425 Park Avenue  
New York, New York 10022  
Tel. (212) 836-8000

**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  
Nicole A. Rizzo

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