

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
AMGEN INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	CIVIL ACTION No.: 05-CV-12237WGY
F. HOFFMANN-LA ROCHE LTD,)	
ROCHE DIAGNOSTICS GMBH,)	
and HOFFMANN-LA ROCHE INC.,)	
)	
Defendants.)	
_____)	

**DEFENDANTS’ MOTION TO COMPEL
CONTINUED DEPOSITION OF MICHAEL BORUN**

Pursuant to the Court’s Order of April 17, 2007, Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Roche”) respectfully move to compel Amgen to produce Michael Borun for continued deposition as a fact witness. As explained further in the accompanying memorandum, notwithstanding the Court’s April 17 order, Amgen contumaciously refuses to produce for continued deposition Michael Borun, the attorney who prosecuted the patents-in-suit and who admitted that he did not disclose certain material information to the USPTO. *See* Court’s Order of April 17, 2007. Specifically, the Court found that, given the important issues raised in Mr. Borun’s testimony referenced in Appendix A at summary numbers 49 and 50, “Roche is entitled to know where Mr. Borun got that information [which was not disclosed to the PTO and which concerns the composition of the EPO subject of the patents in suit] and when” and, if that information came from another Amgen attorney, “where that attorney got his information and when . . . [and] from whom and when.” *See* Exhibit A to accompanying memorandum (Hearing Transcript, April 17, 2007) at 107.

Wherefore, Roche respectfully requests this Court order Amgen to produce Mr. Borun for continued deposition in order to permit further questioning as ordered by the Court.

CERTIFICATE PURSUANT TO LOCAL RULE 7.1 AND 37.1

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 was reached. I also certify that counsel for Roche has complied with the provisions of L.R. 37.1.

DATED: Boston, Massachusetts
June 13, 2007

Respectfully submitted,

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

By their Attorneys,

/s/ Nicole A. Rizzo

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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

Nicole A. Rizzo

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