

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
AMGEN INC.,)	
)	
Plaintiff,)	
)	
vs.)	
)	CIVIL ACTION No.: 012237WGY
F. HOFFMANN-LA ROCHE LTD;)	
ROCHE DIAGNOSTICS GmbH; and)	
HOFFMANN-LA ROCHE INC.)	
)	
Defendants.)	
_____)	

**ROCHE’S MOTION FOR LEAVE TO AMEND ITS PLEADINGS TO
CONFORM TO THE EVIDENCE**

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Roche”) submit this motion seeking leave to amend its answer to conform the pleadings to the evidence by including allegations of Amgen’s inequitable conduct disclosed during discovery and to define relevant markets for purposes of Roche’s antitrust counterclaims.

Roche’s proposed amendments are included in the Second Proposed Amended Answer redlined to indicate added material and attached hereto as Exhibit A. All of Roche’s inequitable conduct allegations sought to be added by amendment were timely disclosed in interrogatory responses prior to the close of fact discovery. Amgen previously represented that it did not object to amendment on Roche’s inequitable conduct allegations disclosed during discovery. Thus, there is no prejudice by incorporating these amendments into the pleadings. Thus, Roche respectfully asks the Court for leave to amend the pleadings to conform to the evidence by including in its

answer these allegations as well as particular market definitions relevant to the antitrust issues in suit (the market definition amendments were also previously unopposed by Amgen). In support of this motion, Roche submits the accompanying memorandum of law.

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: July 5, 2007
Boston, Massachusetts

/s/ Alfred H. Heckel
Alfred H. Heckel

Respectfully submitted,

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

By its attorneys,

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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/ Thomas F. Fleming
Thomas F. Fleming