UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

DEFENDANTS' MOTION *IN LIMINE* TO PRECLUDE PLAINTIFF FROM OFFERING INTO EVIDENCE OR REFERENCING TO THE JURY THE JUNE 2001 SETTLEMENT AGREEMENT

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively "Roche") respectfully requests that the Court preclude plaintiff Amgen Inc. ("Amgen") from relying upon, or referring to, a 2001 Settlement Agreement between, *inter alia*, F. Hoffmann-La Roche, Ltd. and Kirin Amgen, Inc. (Kirin Amgen), at the upcoming trial. The Federal Rules of Evidence make inadmissible evidence of prior settlement agreements, as well as evidence of conduct or statements made in settlement negotiations, where this evidence is "offered to prove liability for, invalidity of, or amount of a claim." Fed. R. Evid. 408. Notwithstanding the Rules, Amgen seeks to introduce into evidence and argue before the jury a June 1, 2001 Settlement Agreement (the "Agreement") between F. Hoffmann-La Roche, Ltd. and Kirin Amgen, along with other third parties, which settled claims of infringement outside of the United States on different foreign patents involving different inventions.

As it identified in interrogatory responses, Amgen's sole basis for admission is that the terms of the Agreement should equitably estopp Roche from challenging the validity of the patents-in-suit in this action. Amgen does not come close to stating a claim for equitable estoppel, which requires, among other things, a showing of detrimental reliance. Amgen claims that Roche represented in the Agreement that it would not challenge the validity of the patents-in-suit in the United States. However, the Agreement by its own terms applies only to claims of infringement outside of the United States, and nowhere in the Agreement did Roche acknowledge the validity of any patents in the United States. Furthermore, the Agreement applies only to patents owned by Kirin Amgen that are not the subject of this action. Amgen therefore could not reasonably believe based upon this Agreement that Roche would not challenge the validity of the patents-in-suit in the United States. Amgen's equitable estoppel argument fails for this reason alone. Thus, Amgen has no legitimate purpose for introducing the Agreement as evidence at trial. Moreover, for these same reasons, the 2001 Settlement Agreement is not relevant to issues of Amgen's alleged secondary considerations of non-obviousness of the patents-in-suit. Finally, even the mere mention of this Agreement before the jury would be unfairly prejudicial to Roche, since it would mislead the jury into thinking that the parties had previously settled this matter. To the extent that the Agreement has any probative value (it has none), it would be drastically outweighed by its unfairly prejudicial impact.

Defendants therefore respectfully request that the Court preclude Amgen from referencing the June 1, 2001 Settlement Agreement to the jury or introducing it into

evidence at trial. In support of this motion, Roche relies on 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: August 14, 2007
Boston, Massachusetts

Respectfully submitted,

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

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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
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