

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

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**ROCHE’S MOTION *IN LIMINE* TO PRECLUDE AMGEN FROM CONFUSING THE JURY WITH STATEMENTS MADE IN EARLIER FOREIGN PROCEEDINGS**

Defendants F. Hoffmann-La Roche, Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Roche”) move *in limine* to preclude Amgen from introducing statements taken from earlier foreign proceedings that are likely to confuse the jury and, in any event, are not probative of the issues in the U.S. litigation.

At trial, Roche will introduce clear and convincing evidence that Amgen’s patents are obvious and thus invalid under 35 U.S.C. § 103. Roche expects that, in an attempt to confuse the jury, Amgen will seek to introduce statements Roche made in European proceedings regarding, for example, what was “common general knowledge” in the art during the relevant time period. While those statements touch on some of the same evidence relevant to the obviousness inquiry, they were directed to an entirely different concept--namely whether the claims in the European proceedings were supported by the patent specification. Whether a patent is obvious and whether that patent’s specification supports or enables its own claims, however, are different inquiries. Because these and others statements from the European proceedings that Roche expects Amgen

to offer will necessarily be taken out of context, the likelihood that they will confuse and mislead the jury outweighs any minimal probative value that the statements may have and should therefore be excluded.

In support of this motion, Roche relies on the accompanying memorandum of law and attached exhibits.

**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 16, 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/ Kregg T. Brooks  
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