

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05 CV 12237 WGY
)	
F. HOFFMANN-LAROCHE LTD.,)	
a Swiss Company, ROCHE DIAGNOSTICS)	
GMBH, a German Company, and)	
HOFFMANN LAROCHE INC., a New)	
Jersey Corporation,)	
)	
Defendants.)	

**PLAINTIFF AMGEN’S MOTION *IN LIMINE* NO. 4:
EXCLUDE GENENTECH’S PLA FILING [ROCHE TRIAL EXH. NO. 1072]
BECAUSE IT IS NOT PRIOR ART**

Pursuant to FRE 402 and 403, Plaintiff Amgen Inc. ("Amgen") requests that this Court preclude Defendants F. Hoffmann-La Roche Ltd., Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively "Roche") from referring to and introducing clinical trial data and techniques described in a confidential Product License Application (“PLA”) [Roche Trial Exh. No. 1072] submitted to the FDA by Genentech in 1986 — about two years after the effective filing dates for the asserted claims of the Lin patents-in-suit — as evidence of what would have been obvious as of 1983-1984.

In his expert report, Roche’s trial expert Dr. John Lowe used this 1986 Genentech PLA to argue that use of Chinese Hamster Ovary (CHO) cells grown in culture to produce *in vivo* biologically active EPO would have been obvious in 1983. The PLA filing discusses techniques and data both unknown to and concealed from those skilled in the art at the time of Lin’s invention, and concerns tissue-type plasminogen activator (tPA), not EPO. This PLA filing is not prior art and Roche has no evidence showing that the PLA reflects the relevant state of the art as

it would have been understood by the ordinarily skilled artisan by the filing dates of the subject in Lin's claimed inventions. Accordingly, the Genentech PLA, as well as Dr. Lowe's opinions based thereon, are irrelevant to Roche's prior art defenses and should be excluded under FRE 402 and 403 because of the likely confusion of the jury.

In support of this motion, Amgen submits a brief.

Respectfully Submitted,

Date: August 17, 2007

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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 no agreement was reached.

/s/ Michael R. Gottfried
Michael R. Gottfried

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the Electronic Case Filing (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/ Michael R. Gottfried
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