

**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. 5:
EXCLUDE EXPERT TESTIMONY REGARDING AMGEN’S REPLICATION OF
ROCHE’S CELL CULTURE MEDIA**

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 introducing evidence or testimony from a Roche witness, including but not limited to Dr. Flavell, or any cross-examination of any Amgen witness, regarding any difference between the cell culture medium used by Dr. Kolodner to grow Roche’s cells and the cell culture medium that Roche says it uses in Germany. Any such difference resulted from Roche’s failure to comply with the Court’s orders on Amgen’s motions to compel production of Roche’s cells.

Dr. Kolodner could not use the exact medium that Roche says it uses to grow its cells in Germany because, despite its counsel’s repeated assurances that Roche would supply its “special” cell culture medium to Dr. Kolodner, Roche never did so (even to this day, despite continued requests by Amgen). Also, Roche delayed sending its instructions as to how Dr. Kolodner could re-create the culture medium until so late in the expert discovery period that it was not possible for Dr. Kolodner to exactly replicate Roche’s medium before submitting his

report. Still further, because Roche had marked the document containing the recipe for making its cell culture medium as “RESTRICTED ACCESS CONFIDENTIAL BLA/IND - LOCKED ROOM ACCESS ONLY,” Dr. Kolodner could not simply send the recipe for Roche’s medium to a commercial vendor (or to scientists at Amgen) to have the medium custom-formulated. Instead, Dr. Kolodner was forced to supplement a standard, pre-made cell culture medium (called “DMEM/F12”) with additional components.

Because Roche’s failure to comply with its discovery obligations resulted in Dr. Kolodner’s inability to exactly replicate the cell culture medium that Roche says it uses to grow its cells in Germany, Amgen requests that this Court preclude Roche from presenting evidence regarding any difference between the cell culture medium used by Dr. Kolodner to grow Roche’s cells and the cell culture medium that Roche says it uses in Germany.

In support of this motion, Amgen submits a brief with exhibits.

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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