

**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. 8:
EXCLUDE ROCHE FROM RELYING ON COMPARISONS BETWEEN
ROCHE’S PEG-EPO PRODUCT AND AMGEN’S ARANESP® PRODUCT**

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 relying on evidence comparing Roche’s accused peg-EPO product (CERA) and Amgen’s Aranesp® product in support of Roche’s noninfringement arguments.

A comparison of Roche’s and Amgen’s products is irrelevant to the issue of patent infringement and likely to confuse the jury. Comparisons between Roche’s peg-EPO product and Amgen’s Aranesp® product are inadmissible under FRE 402 because such comparisons are irrelevant and have no bearing on whether Roche’s product infringes the asserted claims of the Lin patents. The only relevant comparison for an infringement analysis is between Roche’s product and the claims of the Lin patents-in-suit. Moreover, allowing Roche to present comparisons of its product and Amgen’s product would serve only to mislead and confuse the jury. Because this evidence is

irrelevant and likely to mislead and confuse the jury, this Court should exclude it under FRE 402 and 403.

Amgen requests that this Court exclude comparisons of Roche's products and Amgen's products under FRE 402 and 403 because they are irrelevant to the issue of patent infringement and would serve only to mislead and confuse the jury.

In support of this motion, Amgen submits a brief.

Dated: August 20, 2007

Respectfully Submitted,
AMGEN INC.,
By its attorneys,

Of Counsel:

STUART L. WATT
WENDY A. WHITEFORD
MONIQUE L. CORDRAY
DARRELL G. DOTSON
MARYSUSAN HOWARD
KIMBERLIN L. MORLEY
ERICA S. OLSON
AMGEN INC.
One Amgen Center Drive
Thousand Oaks, CA 91320-1789
(805) 447-5000

/s/ Michael R. Gottfried
D.DENNIS ALLEGRETTI (BBO#545511)
MICHAEL R.GOTTFRIED (BBO#542156)
DUANE MORRIS LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210
Telephone: (857) 488-4200
Facsimile: (857) 488-4201

LLOYD R. DAY, JR
DAY CASEBEER
MADRID & BATCHELDER LLP
20300 Stevens Creek Boulevard, Suite 400
Cupertino, CA 95014
Telephone: (408) 873-0110
Facsimile: (408) 873-0220

WILLIAM GAEDE III
McDERMOTT WILL & EMERY
3150 Porter Drive
Palo Alto, CA 94304
Telephone: (650) 813-5000
Facsimile: (650) 813-5100
KEVIN M. FLOWERS
MARSHALL, GERSTEIN & BORUN
LLP
233 South Wacker Drive
6300 Sears Tower
Chicago IL 60606
Telephone: (312) 474-6300
Facsimile: (312) 474-0448

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
Michael R. Gottfried