

**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.)	

**AMGEN’S MOTION *IN LIMINE* NO. 14:
EXCLUDE PEG-EPO EXPERIMENTS CONDUCTED BY CORDS AND CRITICISM
OF AMGEN’S FAILURE TO TEST PEG-EPO BASED UPON ROCHE’S FAILURE TO
PRODUCE A SAMPLE OF PEG-EPO**

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 or introducing into evidence testing performed by Roche’s consultant, Dr. Cords, comparing Roche’s Peg-EPO and EPO because, despite discovery requests and assurances that they would provide Amgen with a sample of Peg-EPO, Roche never produced any samples of Peg-EPO to Amgen.

Dr. Cords ran certain tests comparing the *in vivo* biological activity of deglycosylated Peg-EPO and EPO, and then described the experiments and results in his expert report and a declaration, which several of Roche’s expert witnesses cited in their expert reports to support their noninfringement opinions. Without a sample of Peg-EPO, Amgen was unable to replicate these tests and was limited in its ability to challenge Cords’s test results. Roche should not be

allowed to rely on its Peg-EPO test results at trial, or criticize Amgen's experts for failing to test a sample of Peg-EPO, after it promised to produce Peg-EPO to Amgen and then did not.

Roche also refused to produce a non-redacted copy of the protocol run by Dr. Cords for his experiments. Roche should not be permitted to introduce such experiments, while denying Amgen discovery of the complete test protocol used by Dr. Cords.

Accordingly, Amgen requests that this Court preclude Roche from (a) referring or relying upon any experiments performed by Dr. Cords and (b) referring to Amgen's failure to test Roche's Peg-EPO product.

In support of this motion, Amgen submits a brief with an accompanying declaration and exhibit thereto.

Respectfully Submitted,

Date: August 24, 2007

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By its attorneys,

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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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