

**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. 15:
EXCLUDE TESTIMONY OF ROCHE’S IN-HOUSE COUNSEL GEORGE JOHNSTON
BECAUSE HIS TESTIMONY IS IRRELEVANT AND ROCHE FAILED TO IDENTIFY
HIS TESTIMONY PURSUANT TO FED.R.CIV.P. 26(a) DURING DISCOVERY**

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 presenting at trial testimony of Roche’s witness, George Johnston, in-house counsel for Hoffmann-La Roche, Inc. Mr. Johnston should be precluded from testifying at trial because his testimony would not be relevant to any facts or issues in this case and because Roche has not disclosed him as a witness or any evidence pertinent to his testimony during discovery.

Mr. Johnston was not identified by Roche as a potential witness in its mandatory disclosures pursuant to Fed.R.Civ.P 26(a). Pursuant to Fed.R.Civ.P 26(a) and 37(c)(1), the testimony of a witness presented at trial should be limited to that which was identified during discovery. Also, Roche refused to produce any opinions or the results of any patent investigations in response to Amgen discovery requests. Roche cannot now introduce opinion or

investigation testimony from its in-house counsel, Mr. Johnston, after having denied Amgen discovery on this topic.

Amgen requests that this Court enter an order precluding Mr. Johnston from testifying at trial.

In support of this motion, Amgen submits a brief.

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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