

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMGEN INC.,
Plaintiff,
v.
F. HOFFMANN-LA ROCHE LTD, a
Swiss Company, ROCHE DIAGNOSTICS
GMBH, a German Company, and
HOFFMANN LA ROCHE INC., a New
Jersey Corporation,
Defendants.
Civil Action No.: 1:05-cv-12237 WGY

PLAINTIFF AMGEN INC.'S MOTION IN LIMINE NO. 17: TO EXCLUDE ROCHE FROM PRESENTING EVIDENCE TO CHALLENGE THE NON-OBVIOUSNESS OF THE DNA SEQUENCE ENCODING FOR HUMAN ERYTHROPOIETIN IN 1983

Plaintiff Amgen Inc. ("Amgen") requests that this Court preclude Defendants F. Hoffman-La Roche Ltd., Roche Diagnostics Gmb, and Hoffman-La Roche Inc. (collectively "Roche") from referring or introducing evidence that Dr. Lin's DNA Sequence for encoding human erythropoietin in 1983 was not non-obvious.

In prior adjudications, that issue, and validity in general of patent claims directed to the isolated DNA sequence for human erythropoietin were litigated years ago and decided against Roche's subsidiary, Chugai Pharmaceutical Co., Ltd. and Genetics Institute by this Court, the Federal Circuit, the Patent Office Board of Patent Appeals and Interferences and the District of Delaware. Accordingly, these adjudications collaterally estop Roche from making the same assertions in this proceeding and from relitigating the factual findings essential to the issues decided in these prior adjudications. Roche asks the Court to preclude Roche from introducing such evidence that contradicts the findings from these prior adjudications.

Accordingly, Amgen requests that this Court preclude Roche from referring to or offering any evidence at trial that the DNA sequence directed to human erythropoietin was obvious,

including the testimony of Drs. Lowe and Spinowitz that the cloning of the EPO DNA sequence was obvious.

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

DATED: August 27, 2007

Respectfully Submitted,
AMGEN INC.,
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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