

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. 22:
PRECLUDE ROCHE FROM INTRODUCING, INCLUDING IN ITS INVALIDITY
OPENING, TESTIMONY, EVIDENCE OR ARGUMENT ON PEGYLATION DURING
THE VALIDITY PHASE OF THE TRIAL AND TO EXCLUDE ANY PROFFERED
TESTIMONY BY DR. ROBERT LANGER DURING THE TRIAL

Pursuant to FED. R. EVID. 401, 402, and 403 and FED. R. CIV. P. 26(a)(2)(B) and 37(c)(1), Amgen moves to preclude Roche from introducing testimony, evidence, or argument during the validity phase of the trial, including during Roche's opening statement. The Court's August 27, 2007, Order rendered moot and irrelevant any lay or expert evidence during the validity phase of the trial on the question whether one of ordinary skill in the art could pegylate EPO in 1984, and whether Dr. Lin was in possession of the invention of pegylated EPO. The report and opinion of Dr. Robert Langer, one of Roche's expert witnesses, was limited to the enablement and written description of PEG-modified proteins in the patents-in-suit, thus any testimony that Dr. Langer could give can have no relevance to the validity of the patents.

Amgen requests an order under Fed. R. Evid. 401, 402, and 403 and Fed. R. Civ. P. 26(a)(2)(B) and 37(c)(1):

- precluding Roche from mentioning pegylation and/or pegylated erythropoietin (“peg-EPO”) during its opening statement or at any other time during the validity phase of the trial;
- excluding the testimony of Dr. Robert Langer from any phase of the trial;
- precluding any testimony by Dr. Alexander Klivanov based on or referring to opinions of Dr. Robert Langer during any phase of the trial;
- striking the entirety of the March 28, 2007 deposition testimony of Amgen witness Graham Molineux designated by Roche from the validity phase of the trial; and
- striking the March 29, 2007 deposition testimony of Amgen witness Stephen Elliott designated by Roche at pages 129-133, 159, 185-193, and 197-199 from the validity phase of the trial.

In support of this motion, Amgen submits a brief.

DATED: August 31, 2007

Of Counsel:

Stuart L. Watt
Wendy A. Whiteford
Monique L. Cordray
Darrell G. Dotson
Kimberlin L. Morley
Erica S. Olson
AMGEN INC.
One Amgen Center Drive
Thousand Oaks, CA 91320-1789
(805) 447-5000

Respectfully Submitted,

AMGEN INC.,

/s/ Michael R. Gottfried

D. Dennis Allegretti (BBO# 545511)
Michael R. Gottfried (BBO# 542156)
Patricia R. Rich (BBO# 640578)
DUANE MORRIS LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210
Telephone: (857) 488-4200
Facsimile: (857) 488-4201

Lloyd R. Day, Jr. (pro hac vice)
DAY CASEBEER MADRID & BATCHELDER LLP
20300 Stevens Creek Boulevard, Suite 400
Cupertino, CA 95014
Telephone: (408) 873-0110
Facsimile: (408) 873-0220

William G. Gaede III (pro hac vice)
McDERMOTT WILL & EMERY
3150 Porter Drive
Palo Alto, CA 94304
Telephone: (650) 813-5000
Facsimile: (650) 813-5100

Kevin M. Flowers (pro hac vice)
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