

UNITED STATES DISTRICT
COURT DISTRICT OF
MASSACHUSETTS

AMGEN, INC.,)	
_____)	
Plaintiff,)	
)	
v.)	
)	
F. HOFFMANN-LA ROCHE LTD.,)	CIVIL ACTION)
ROCHE DIAGNOSTICS GmbH, and)	No. 05-12237-WGY))
HOFFMANN-LA ROCHE INC.,))))	
Defendants.		

Order

Before the Court are Hoffman LaRoche's (Roche's) and Amgen Inc.'s various motions for judgment as a matter of law and Roche's motions for a new trial. In addition, the Court has taken under advisement Amgen's motion for a permanent injunction. The issues have been well briefed, and the Court has entertained oral argument. While the Court intends to issue a thorough written opinion in a timely fashion, it recognizes the interests of justice and efficiency will be served by an expeditious ruling that will enable the parties to appeal - immediately - the Court's remedial rulings to the Federal Circuit. Indeed, at oral argument, Roche candidly represented that they will soon cease self-injunction. The Court therefore declares the following:

Though the Court reserves the right to amend its decision upon issuance of a written opinion, the jury's verdict will stand in all respects. Each party's motions for judgment as matter of law and for a new trial is are denied.

With the jury's verdict intact, the Court must determine whether an injunction is appropriate under eBay Inc. v.

MercExchange, L.L.C., 126 S.Ct. 1837 (2006). To that end, the Court makes the following findings: First, the jury verdict confirms that Amgen's patents are valid and infringed. Second, anything other than permanent injunction for the remaining life of the patents would inadequately compensate Amgen. Third, the balance of hardships as between Amgen and Roche weighs in favor of an injunction for Amgen.

This leaves the question of whether "the public interest would not be disserved by a permanent injunction." Id. at 1839. The Court continues to struggle with the complex legal questions and the voluminous record relating to this final factor. Nevertheless, parties' representations and other factors have led the Court to conclude that a preliminary injunction must issue. The Court therefore finds no disservice to the public interest from the preliminary injunction that follows:

Accordingly, Roche, its agents, servants, employees, counsel, and all persons and entities acting in concert therewith, are hereby preliminarily enjoined for the life of the remaining patents-in-suit, as to the claims of the patents-insuit found to be infringed herein, from infringing those patents in any way within the United States. The Court intends this order to give the Federal Circuit appellate jurisdiction pursuant to 28 U.S.C. § 1292(c)(1).

The Court expresses no opinion with respect to whether this preliminary injunction will become permanent. In the interests of transparency and efficiency, the Court apprised the parties that it may modify the preliminary injunction in 30 days, provided the Federal Circuit has not exercised jurisdiction over

an appeal. Under the terms of that potential order, Roche would be permanently enjoined unless five conditions were met:

Primarily, Roche must pay a 22.5% royalty. Second, MIRCERA must be introduced in the Medicare field with an ASP at or less than the ASP for EPOGEN, and the ASP must remain at or below EPOGEN's for the remainder of the life of Amgen's patents. Third, Roche must provide evidence of clinical usage and the real world dosage of MIRCERA so that the Court accurately can determine a dose conversion factor for MIRCERA's FDA approved indications. Fourth, Roche must fund an independent agency that will monitor Roche sales and account for the royalty payments. Finally, if Roche decides to enter the market based on these conditions, regardless of the outcome of any future litigation, Roche must agree that it will continue to provide MIRCERA to any patient who requests it, at or below the same price for which it was authorized, so long as the patient requires.

SO ORDERED.

/s/ William G.
Young WILLIAM G.
YOUNG District
Judge