

United States Court of Appeals for the Federal Circuit

2007-1014

AMGEN, INC.,

Appellant,

v.

INTERNATIONAL TRADE COMMISSION,

Appellee,

and

ROCHE HOLDING LTD., F. HOFFMANN-LA ROCHE LTD., ROCHE
DIAGNOSTICS GMBH, and HOFFMAN-LA ROCHE INC.,

Intervenors.

Michelle Walters, Attorney, Office of the General Counsel, United States International Trade Commission, of Washington, DC, filed a combined petition for panel rehearing and rehearing en banc for appellee. With her on the petition were James M. Lyons, General Counsel, and Wayne W. Herrington, Assistant General Counsel.

Kent R. Stevens, Cadwalader, Wickersham & Taft LLP, of Washington, DC, filed a combined petition for panel rehearing and rehearing en banc for intervenors. With him on the petition was Evelyn G. Heilbrunn. Of counsel on the petition were Bartholomew Vedirame, Michael P. Dougherty, and Tony V. Pezzano, of New York, New York. Also on the petition were V. James Adduci II, Adduci, Mastriani & Schaumberg, LLP, of Washington, DC, and Leora Ben-Ami, Patricia A. Carson, Thomas F. Fleming, Howard S. Suh, and Manvin Mayell, Kaye Scholer LLP, of New York, New York.

Lloyd R. Day, Jr., Day Casebeer Madrid & Batchelder LLP, of Cupertino, California, filed a response to the petitions for appellant. Of counsel on the response were Cecilia H. Gonzalez and Margaret D. Macdonald, Howrey LLP, of Washington, DC.

Appealed from: United States International Trade Commission

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DIAGNOSTICS GMBH, AND HOFFMANN-LA ROCHE, INC.,

Intervenors.

Appeal from the United States International Trade Commission in Investigation No. 337-TA-568.

ON PETITION FOR PANEL REHEARING
AND REHEARING EN BANC

Before MICHEL, Chief Judge, NEWMAN, MAYER, LOURIE, RADER, SCHALL,
BRYSON, GAJARSA, LINN, and PROST, Circuit Judges.*

PER CURIAM.

ORDER

This case was heard by a panel of three judges. Combined petitions for panel rehearing and rehearing en banc were filed by the International Trade Commission and Roche Holding Ltd., F. Hoffmann-La Roche, Ltd., Roche Diagnostics GmbH, and Hoffman-La Roche, Inc. A response was invited by the court and filed by Amgen Inc.

* Circuit Judges Dyk and Moore did not participate in the disposition of this appeal.

The petition for rehearing en banc and response having been referred to the circuit judges who are in regular active service, and a poll having been requested and taken,

IT IS ORDERED THAT:

Rehearing en banc is granted for the limited purpose of authorizing the panel to revise part II of its opinion.

The judgment of the court entered on March 19, 2008, and reported at 519 F.3d 1343, is hereby vacated, and the opinion of the court accompanying the judgment is withdrawn.

The en banc court returns this appeal to the merits panel, which issues the revised opinion that accompanies this order.

FOR THE COURT

April 30, 2009
Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Michelle Walters, Esq.
Kent R. Stevens, Esq.
Lloyd R. Day, Jr., Esq.