

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

ROCHE’S SUPPLEMENTAL MOTION FOR LEAVE TO FILE UNDER SEAL A DOCUMENT CONTAINING DEFENDANTS’ TRADE SECRETS SUBMITTED IN CONNECTION WITH AMGEN’S MOTION FOR LEAVE TO REPLY IN FURTHER SUPPORT OF ITS MOTION *IN LIMINE* NO. 13

The defendants F. Hoffmann-La Roche, Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche, Inc. (collectively “Roche”) respectfully submit that it is unnecessary for the Court to review the highly confidential deposition transcript of Dr. Jeffery Borer — which was submitted to for *in camera* review as Hand Exhibits 1¹ in support of Amgen’s reply — because the Court has already ruled on Amgen’s Motion *In Limine* No. 13. To make a public record of Roche’s position and guard against the future inadvertent disclosure of this document, however, Roche hereby submits this supplemental motion to incorporate Hand Exhibit 1 into its motion to seal.²

Roche has already moved to seal an excerpt of the highly confidential Borer deposition, which was submitted to the Court as Fishman Exhibit 7 in connection with Amgen’s original

¹ Declaration of Aaron R. Hand in Support of Amgen Inc.’s Reply in Support of Its Motion *In Limine* No. 13: Exclude Evidence and Argument Regarding Roche’s FDA Filings and Communications that It Withheld Throughout Fact Discovery (Docket No. 1093). This Exhibit was submitted to the Court for *in camera* review on September 20, 2007, after Roche moved to seal the documents submitted *in camera* in connection with Amgen’s motion.

² Roche’s Motion for Leave to File Under Seal Documents Containing Defendants’ Trade Secrets Submitted in Connection with Amgen’s Motion *in Limine* No. 13 (D.N. 912).

Motion *In Limine* No. 13. As Dr. Viswanadhan testified, Dr. Borer's deposition transcript contains Roche's sensitive trade secret information regarding its internal analysis and conclusions about the preliminary safety data drawn from Roche's clinical studies for MIRCERA®. *See* Viswanadhan Decl. ¶ 12.³ He further testified that this information has not previously been disclosed, and that its premature disclosure would irreparably harm Roche. *See* Viswanadhan Decl. ¶¶ 5, 6, 12.

Hand Exhibit 1 contains the same highly sensitive trade secret information as Fishman Exhibit 7. Indeed, they are partially overlapping excerpts from the same discussion in the same document.⁴ Thus Roche respectfully requests that Hand Exhibit 1 not be publicly disclosed for the reasons put forth in its original moving papers.

In support of this motion, Roche relies on its Memorandum of Law (D.N. 913) and Declaration of Krishnan Viswanadhan (D.N. 914) that were submitted in connection with Roche's Motion for Leave to File Under Seal Documents Containing Defendants' Trade Secrets Submitted in Connection with Amgen's Motion *In Limine* No. 13 (D.N. 912).

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 that no agreement was reached.

³ Declaration of Krishnan Viswanadhan in Support of Roche's Motion for Leave to File Under Seal Documents Containing Defendants' Trade Secrets Submitted in Connection with Amgen's Motion *in Limine* No. 13 (Docket No. 914).

⁴ Fishman Ex. 7 includes pages 49-52 of the Borer deposition transcript; Hand Exhibit 1 includes pages 49-51, 54-59.

DATED: Boston, Massachusetts
September 26, 2007

Respectfully submitted,

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

By their Attorneys,

/s/ Keith E. Toms

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). Pursuant to agreement of counsel dated September 9, 2007, paper copies will not be sent to those indicated as non registered participants.

/s/ Keith E. Toms

Keith E. Toms