

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

**DEFENDANTS’ MOTION TO FILE UNDER SEAL DOCUMENT IN SUPPORT OF
THEIR CROSS-MOTION FOR ENTRY OF A PROTECTIVE ORDER AND
OPPOSITION TO AMGEN’S MOTION FOR A PROTECTIVE ORDER**

Pursuant to Local Rule 7.2, Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Roche”) move for an order granting leave to file under seal a one-page document entitled “Meeting Minutes - Global CAT CI Meeting.” This documents was produced by plaintiff Amgen, Inc. (“Amgen”) in the ITC proceeding as AM-ITC 30876 (the “ITC proceeding”), and marked as Confidential pursuant to the Protective Order in that proceeding. Still restricted by the Protective Order in the ITC proceeding, Roche respectfully submits this motion to make this important document available to the Court because it significantly undermines the assertions made in Amgen’s Motion for Entry of a Protective Order (Roche’s opposition to the motion is being filed concurrently herewith).

As grounds for the motion, Roche states that this document definitively shows that Wendy A. Whiteford and Mary Susan Howard, two of Amgen’s six in-house counsel of record in this case who seek access to Roche’s highly confidential information, are members of Amgen’s Competitive Anemia Team (“CAT”), which formulates Amgen’s strategy regarding

new competitive entrants in the anemia treatment market. This document specifically refers to Roche, and lists the activities that the Competitive Anemia Team (which includes Ms. Whiteford and Ms. Howard) will undertake.¹ This document compellingly demonstrates why Ms. Whiteford, Ms. Howard, and Amgen's other in-house counsel must be precluded from seeing Roche's FDA filings and other highly confidential documents, and that Roche's proposed two-tier protective order is necessary to prevent Amgen from misusing such information in exactly the manner contemplated in the documents.

Thus, this document undermines and contradicts the assertions made in Amgen's motion for a protective order. Roche believes its important that this document be reviewed by the Court, and thus respectfully requests that the Court grant leave to file this one-page document under seal, so that the Court may consider it in connection with Roche's Cross-Motion for Entry of a Protective Order and Opposition to Amgen's Motion for a Protective Order.

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. No agreement was reached.

¹ Additional information about the activities of CAT and Ms. Whiteford's role is revealed in a second document titled "Competitive Anemia Task Force – Core Team," which is being filed in the public record with the permission of Amgen. See Exhibit G to Defendant's Cross Motion for Entry of a Protective Order.

DATED: Boston, Massachusetts
November 3, 2006

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

By its attorneys,

/s/ Julia Huston
Lee Carl Bromberg (BBO# 058480)
Julia Huston (BBO# 562160)
Keith E. Toms (BBO# 663369)
BROMBERG & SUNSTEIN LLP
125 Summer Street
Boston, MA 02110
Tel. (617) 443-9292
jhuston@bromsun.com

- and -

Leora Ben-Ami (*pro hac vice*)
Patricia A. Carson (*pro hac vice*)
Thomas F. Fleming (*pro hac vice*)
Howard Suh (*pro hac vice*)
Peter Fratangelo (BBO# 639775)
KAYE SCHOLER LLP
425 Park Avenue
New York, NY 10022
Tel: (212) 836-8000

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) and paper copies will be sent to those indicated as non registered participants on the above date.

/s/ Julia Huston
Julia Huston