

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.)	
_____)	

**DEFENDANTS’ UNOPPOSED MOTION TO FILE UNDER SEAL A DOCUMENT
CONTAINING DEFENDANTS’ CONFIDENTIAL AND TRADE SECRET MATERIALS**

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Roche”) respectfully move, pursuant to the Protective Order, to file under seal a document which contains Roche’s confidential and trade secret materials and which Amgen seeks to file in the public record.¹

As set forth in greater detail in the accompanying Memorandum and in the Declaration of Richard Beswick, Associate Medical Director at Hoffmann-La Roche (“Beswick Declaration”),² the document which Amgen seeks to file in the public record is a technical internal Roche document regarding, *inter alia*, confidential information concerning Roche’s drug development, budgeting, manufacturing, scale-up of its product, and supply.

¹ The document Amgen seeks to file was submitted to the Court in a sealed envelope for *in camera* review on January 12, 2007 and corresponds to Exhibit 1 of Amgen’s Declaration of Deborah E. Fishman in Support of Plaintiff’s Memorandum in Support of its Motion for Clarification of the Court’s December 29, 2006 Order (Docket No. 237).

² The Beswick Declaration was filed by Roche on December 22, 2006 (Docket No. 193), in connection with another motion to seal the same document. Pursuant to CM/ECF Administrative Procedures Rule L(3), Roche is not re-filing this Declaration but instead refers herein to the previously filed Declaration.

As an initial matter, this document should not be accepted for filing at all because it is irrelevant. Amgen seeks to file this document in connection with its Motion for Clarification of its previously filed Motion to Compel, and had sought to file this same document in connection with that original motion.³ However, in its Order of December 29, 2006, the Court stated that it “made this [ruling] without the need for reference” to this document (or any of the others submitted with Amgen’s original motion) and ordered this document, along with the others, returned to Roche. Indeed, it is neither necessary nor appropriate for the Court to rely on additional evidence in deciding Amgen’s Motion for Clarification that it did not reference in its disposition of the original motion. As such, the Court should decide the present motion without reference to Exhibit 1 and should not accept this document for filing.

However, if the Court does accept this document for filing, Roche respectfully requests that the entire document be filed under seal because it would reveal the trade secrets of Roche.

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 counsel for Amgen has agreed not to oppose this motion.

³ Amgen sought to attach this document as Exhibit 7 to its Declaration of Krista M. Carter In Support Of Plaintiff Amgen Inc.’s Memorandum In Support Of Its Motion To Compel, filed on 12/15/06 (Docket No. 177).

DATED: Boston, Massachusetts
January 19, 2007

Respectfully submitted,

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

By its Attorneys,

/s/ Nicole A. Rizzo

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

/s/ Nicole A. Rizzo

Nicole A. Rizzo

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