

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’ MOTION TO FILE UNDER SEAL DOCUMENTS 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 documents which contain Roche’s confidential and trade secret materials submitted for *in camera* review by Amgen if the Court deems them necessary for its ruling on Amgen’s Motion To Determine The Sufficiency Of Roche’s Responses To Amgen’s Requests For Admission (Docket No. 275).¹ The present motion relates solely to the confidentiality of Amgen’s motion papers; as to the substantive issues, Roche will file its opposition to Amgen’s motion on or before the deadline of February 27, 2007.

As a preliminary matter, all four Exhibits that Amgen has submitted to the Court for *in camera* review, Exhibits 2, 9, 10, and 11, should not be accepted for filing at all, in the public

¹ The documents Amgen seeks to file were submitted to the Court in a sealed envelope for *in camera* review on February 13, 2007, and correspond to Exhibits 2, 9, 10 and 11 of Amgen’s Declaration Of Krista M. Carter In Support Of Plaintiff’s Motion To Determine The Sufficiency Of Roche’s Responses To Amgen’s Requests For Admission (Docket No. 277) and to excerpts thereof in Amgen’s Memorandum in Support of Plaintiff’s Motion To Determine The Sufficiency Of Roche’s Responses To Amgen’s Requests For Admission (Docket No. 276) on pages 15 and 18, and in Attachment A pages 2, 8-10, 11 (at fn 54) and 12 (at fn 56).

record or otherwise, because they are irrelevant and/or unnecessary to the Court's disposition of Amgen's motion. As a matter of law, Exhibits 9, 10, and 11 are completely irrelevant because they are Roche business documents and interrogatory answers that Amgen seeks to use to contest the accuracy of Roche's answers to the Requests for Admission. It is axiomatic, however, that Amgen may not litigate the accuracy or truthfulness of Roche's denials at this stage of the litigation. Further, to the extent that the information contained in these exhibits is relevant to Amgen's motion at all, Amgen has aptly summarized the content of the document in the text of its Memorandum, and the Court does not need to examine the exhibits themselves in order to accept Amgen's summary of its contents. Likewise, Exhibit 2, which is Roche's Responses to the Requests for Admission, should not be accepted for filing because it is clear from the excerpted portions in Amgen's Memorandum of Roche's responses to the Requests for Admission that Roche has made a full response or stated the reason for its objection, and as discussed above, it is improper for the Court to determine the accuracy of Roche's responses at this stage in the litigation. The Court should not be burdened by deciding the trade secret status of these exhibits when they are completely irrelevant and/or unnecessary to the disposition of Amgen's motion.

If the Court finds that it is appropriate to consider these documents in connection with Amgen's motion, however, Roche hereby requests that Exhibit 2, 9, and 10 with the corresponding excerpts in Amgen's memorandum be filed under seal.² Exhibits 2, 9, and 10 should be filed under seal because they include excerpts from Roche's highly sensitive, confidential Biologics License Application ("BLA") and Investigational New Drug application ("IND") regarding the particular chemical synthesis of Roche's unique product and the

² While Roche maintains that all four exhibits are highly confidential documents, in light of the Court's requirement that only trade secrets be filed under seal, Roche will not object to Exhibit 11 being filed in the public record if the Court determines that it is necessary to decide Amgen's motion.

recombinant CHO cell line which produces EPO, and the characteristics of Roche's cell bank for EPO including details such as cultivation time and conditions and genetic stability.

As grounds for this motion, Roche relies on the accompanying Memorandum and Declaration of Dr. Reinhard Franze, Head of Pharmaceutical Biotech Technical Development Fermentation within the Pharmaceutical Biotech Production at Roche Diagnostics GmbH.

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 counsel for Amgen does not assent.

DATED: Boston, Massachusetts
February 20, 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) and paper copies will be sent to those indicated as non registered participants on the above date.

/s/ Keith E. Toms

Keith E. Toms

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