

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

| | | |
|----------------------------------|---|-------------------------------------|
| AMGEN INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No.: 1:05-cv-12237 WGY |
| v. |) | |
| |) | |
| F. HOFFMANN-LA ROCHE LTD, a |) | |
| Swiss Company, ROCHE DIAGNOSTICS |) | |
| GMBH, a German Company, and |) | |
| HOFFMANN LA ROCHE INC., a New |) | |
| Jersey Corporation, |) | |
| |) | |
| Defendants. |) | |

**AMGEN INC.’S [PROPOSED] REPLY TO DEFENDANTS’ OPPOSITION TO
AMGEN’S MOTION TO DEEM DOCUMENTS AND
MEMORANDUM CONFIDENTIAL THAT DEFENDANTS’ FILED
WITH THEIR MOTION TO COMPEL PRODUCTION OF DOCUMENTS
IMPROPERLY WITHHELD ON GROUNDS OF PRIVILEGE**

Roche misses the point of Amgen’s motion completely. Amgen’s motion addresses a situation neither contemplated nor addressed by Court’s November 30, 2006 Order (Docket No. 159) or the Amended Protective Order (Docket No. 274) - the situation of making public another party’s attorney-client privileged and/or work-product protected information prior to the Court resolving the dispute. Both these orders addressed “trade secrets” but did not address one of the oldest privileges for confidential information – attorney-client privilege. Roche has asserted that Amgen waived its attorney-client privilege and work-product privilege in this case. Roche has submitted documents containing what it has alleged contains Amgen’s privileged information. Amgen does not agree with Roche’s assertions that the documents are privileged however if Roche is correct, the information should enter the public domain only after the Court has resolved Roche’s motion.¹ Nor are sanctions warranted because Amgen’s motion falls outside of

¹ Roche implies that Amgen has not briefed the Court on why the Court should grant Amgen’s motion to deem certain documents Roche filed confidential. That is not true. Amgen’s papers filed yesterday contained detailed reasons why the Court should grant its motion. The Court has been briefed of why the documents should be deemed confidential. Roche has been put on notice of the motions and Amgen’s bases for the motion.

the Court's November 30, 2006 Order and the Amended Protective Order. Amgen is not harassing Roche (as Roche claims) but is attempting to prevent the premature disclosure of privileged information (if Roche's assertions are correct) into the public domain until the Court has decided the motion.

Amgen respectfully requests the court to order Appendices A, B (Exhibits 1, 3, 6, 7, and 8), C and the Memo as confidential under the protective order and filed under seal until the Court resolves this motion. The Court should deny Roche's request for sanctions.

April 3, 2007

Respectfully Submitted,

AMGEN INC.,

Of Counsel:

Stuart L. Watt
Wendy A. Whiteford
Monique L. Cordray
Darrell G. Dotson
Kimberlin L. Morley
Erica S. Olson
AMGEN INC.
One Amgen Center Drive
Thousand Oaks, CA 91320-1789
(805) 447-5000

/s/ Michael R. Gottfried

D. Dennis Allegretti (BBO# 545511)
Michael R. Gottfried (BBO# 542156)
Patricia R. Rich (BBO# 640578)
DUANE MORRIS LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210
Telephone: (857) 488-4200
Facsimile: (857) 488-4201

Lloyd R. Day, Jr. (*pro hac vice*)
DAY CASEBEER MADRID & BATCHELDER LLP
20300 Stevens Creek Boulevard, Suite 400
Cupertino, CA 95014
Telephone: (408) 873-0110
Facsimile: (408) 873-0220

William G. Gaede III (*pro hac vice*)
McDERMOTT WILL & EMERY
3150 Porter Drive
Palo Alto, CA 94304
Telephone: (650) 813-5000
Facsimile: (650) 813-5100

Kevin M. Flowers (*pro hac vice*)
MARSHALL, GERSTEIN & BORUN LLP
233 South Wacker Drive
6300 Sears Tower
Chicago, IL 60606
Telephone: (312) 474-6300
Facsimile: (312) 474-0448

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the Electronic Case Filing (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/ Michael R. Gottfried

Michael R. Gottfried