

# EXHIBIT A

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

AMGEN INC., )  
 )  
 Plaintiff, )  
 )  
 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. )

---

Civil Action No.: 1:05-cv-12237 WGY

**AMGEN INC.’S REPLY TO DEFENDANTS’ OPPOSITION TO AMGEN’S MOTION  
TO DEEM ITS OPPOSITION TO DEFENDANTS’ MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS IMPROPERLY WITHHELD ON GROUNDS OF  
PRIVILEGE AND EXHIBIT 1 TO THE OPPOSITION CONFIDENTIAL.**

Roche’s latest opposition again misses the point of Amgen’s motion completely. As with Amgen’s earlier filing on this matter, Amgen’s filing (Docket No. 366) addresses the same situation that its earlier motion addressed (Docket No. 345) and is therefore a situation neither contemplated nor addressed by Court’s November 30, 2006 Order (Docket No. 159) or the Amended Protective Order (Docket No. 274). That is 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. While Amgen does not agree with Roche’s assertions that the documents are privileged, if the

Court finds Roche is correct, the information should enter the public domain only after the Court has resolved Roche's motion.<sup>1</sup>

As with Roche's earlier claim for sanctions, sanctions are not warranted here because Amgen's motion falls outside of the Court's November 30, 2006 Order and the Amended Protective Order. Notwithstanding Roche's assertions to the contrary, Amgen has not abused the protective order nor ignored the Court's orders. The matter before the Court concerns material that Roche has alleged is privileged and until the Court rules on Roche's underlying motion the material should not be made public. Amgen's actions have been taken in good faith and clearly do not give rise to sanctions, especially the extreme sanctions that Roche has requested. Accordingly, Roche's request for sanctions should be denied.

Amgen respectfully requests the court to order its Opposition and Exhibit 1 to the Opposition confidential and filed under seal until the Court resolves this motion. The Court should deny Roche's request for sanctions.

April 13, 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/ Patricia R. Rich  
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: (617) 289-9200  
Facsimile: (617) 289-9201

---

<sup>1</sup> 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 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.

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 April 13, 2007.

/s/ Patricia R. Rich

Patricia R. Rich