

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 FOR AN ORDER FOR AMGEN TO SHOW CAUSE  
WHY IT IS NOT IN CONTEMPT OF THE PROTECTIVE ORDER**

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Roche”), respectfully submit this motion to compel Amgen Inc. to show cause why it is not in contempt of the Amended Protective Order (D.N. 274) in this case. At the close of business on April 13, 2007, the Friday before a long holiday weekend, Amgen electronically filed in the public record 14 highly confidential Roche documents regarding current MIRCERA® trial and studies totaling 173 pages. Although the clerk removed the material from the public record on the following Monday morning at Roche’s insistence, Roche has been grievously harmed by their disclosure over a 2½ day period, and Court intervention is needed to restore the status quo and curb future misconduct by Amgen.

Amgen’s improper filing was not an isolated occurrence, but is part of a larger pattern by which Amgen has repeatedly violated the Amended Protective Order and deliberately exploited Roche’s apprehensions that its valuable trade secrets will be

revealed in this litigation. Amgen has repeatedly attempted to file Roche's confidential information concerning MIRCERA® (which is still undergoing FDA approval) in the public record without justification, and indeed this Court has admonished Amgen for doing so. Amgen has continued to refuse to treat Roche's confidential documents in accordance with the Amended Protective Order, however, while at the same time improperly seeking to shield from public view Amgen documents which are clearly non-confidential, including even Amgen's own privilege log. Roche has sustained untold harm by having its trade secrets concerning MIRCERA® freely available to its competitors and others for more than 65 hours on the Court's web site in this closely watched case, while court personnel were unavailable over the weekend to remove Amgen's improper filing from the public record.

Roche asks that the Court impose contempt sanctions on Amgen for its continued violations of the Amended Protective Order, including compensating Roche for the attorneys' fees and expenses it has spent in battling Amgen's continuing violations. Further, Roche seeks sanctions sufficient to coerce Amgen into complying with the Amended Protective Order, including denying the motion which accompanied the confidential documents, restricting Amgen's attorneys from accessing Roche confidential information, and imposing stiff penalties for future violations of the Amended Protective Order.

In support of this motion, Roche submits the memorandum of law filed herewith.

Dated: April 17, 2007  
Boston, Massachusetts

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

*By their attorneys,*

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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/ Julia Huston  
Julia Huston