

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 LEAVE TO FILE UNDER SEAL DOCUMENTS  
CONTAINING DEFENDANTS’ TRADE SECRETS AND SUBMITTED IN  
CONNECTION WITH AMGEN’S MOTION TO PRECLUDE FURTHER  
INTERFERENCE WITH THIRD-PARTY DISCOVERY**

Defendants F. Hoffmann-La Roche Ltd, Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively “Roche”) respectfully move, pursuant to Local Rule 7.2 and 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 Preclude Further Interference with Third-Party Discovery and Compel Production of Documents and Deposition Testimony, or in the Alternative, Motion to Strike Defendants’ Defense Under 35 U.S.C. § 271(e)(1) (Docket No. 377).<sup>1</sup> The present motion relates solely to the confidentiality of Amgen’s motion papers; as to the substantive

<sup>1</sup> The documents Amgen seeks to file in the public record were submitted for *in camera* review on April 13 and 16, 2007 and correspond to Exhibits 4-6, 10-12, 14-15, and 17-18 of the Declaration of Mario Moore in Support of Plaintiff Amgen Inc.’s Motion to Preclude Further Interference with Third-Party Discovery and Compel Production of Documents and Deposition Testimony, or in the Alternative, Motion to Strike Defendants’ Defense Under 35 U.S.C. § 271(e)(1) (Docket No. 379) (the Moore declaration). Amgen first submitted only 5 of the 19 confidential documents on April 13, 2007 and erroneously filed 14 of Roche’s confidential documents in the public record. Upon request by Roche, Amgen removed those documents from the public record and submitted them for *in camera* review on April 16, 2007. The present motion seeks leave to file under seal all of the documents containing trade secrets submitted in connection with the Moore declaration.

issues, Roche will file its opposition to Amgen's motion on or before the deadline of April 27, 2007.

None of the exhibits that Amgen seeks to file should be accepted for filing at all, in the public record or otherwise, because they are unnecessary to the Court's disposition of Amgen's motion. Indeed, Amgen has repeatedly attempted to file Roche's confidential and trade secret documents in connection with its discovery motions, and the Court has in turn decided each motion without need to reference these documents. The Court has also noted that Amgen is seeking to harass Roche with this tactic.<sup>2</sup> The documents at issue here are similarly unnecessary to the Court's disposition and should not be accepted for filing at all. If the Court determines that some or all of these exhibits are necessary for its decision, however, Roche requests that Exhibits 4-6, 10-12, 14-15, and 17-18 be filed under seal to protect Roche trade secrets contained in these documents.<sup>3</sup> As grounds for this motion, Roche relies on the accompanying Memorandum and Declaration of Richard Beswick, Associate Medical Director at Hoffmann-La 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 counsel for Amgen does not assent.

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<sup>2</sup> In its February 28, 2007 Order, the Court held: "This Ruling Has Been Made Without Any Reference to the So-Called Confidential Documents, A Procedure Which - It Is Becoming Increasingly Apparent - Is Being Employed Solely to Harass and Embarrass An Opposing Litigant and Cause Waste of Resources. This Court Will Not Continue to Tolerate Such Litigation Conduct."

<sup>3</sup> While Roche maintains that all of the exhibits submitted for *in camera* review are highly confidential documents, in light of the Court's requirement that only trade secrets be filed under seal, Roche will not object to Exhibits 7-9, 13-14, 16, 23-24, 28, and 29 being filed in the public record if the Court determines that they are necessary to decide Amgen's motion.

DATED: Boston, Massachusetts  
April 19, 2007

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/ Nicole A. Rizzo

Nicole A. Rizzo

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