

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN INC,

Plaintiff,

v.

CIVIL ACTION No. 05-cv-12237-WGY

**F. HOFFMAN-LA ROCHE LTD.,
ROCHE DIAGNOSTICS GmbH, and
HOFFMAN-LA ROCHE INC.**

Defendants.

**ASSENTED-TO MOTION BY NON-PARTY FRESENIUS FOR
EXTENSION OF TIME TO FILE MOTION FOR LEAVE
TO HAVE A DOCUMENT CONTAINING FRESENIUS' CONFIDENTIAL AND
TRADE SECRET INFORMATION THAT WAS FILED BY AMGEN
PROTECTED UNDER SEAL**

Now comes Fresenius Medical Care Holdings, Inc., d/b/a Fresenius Medical Care North America ("Fresenius"), who is not a party to this action, and moves for an extension of time to file a motion for leave to have a certain document containing Fresenius' confidential and trade secret information protected under seal.

The specific Fresenius confidential and trade secret information at issue was submitted to chambers by Plaintiff Amgen, Inc. ("Amgen") on June 15, 2007 as Exhibit 4 to the Declaration of James M. Fraser in Support of Amgen's Motion for Summary Judgment on Roche's Antitrust and State Law Counterclaims (Docket No. 521). Under the current protective order in this case, Fresenius understands that it has four court days (*i.e.*, until June 21, 2007) to file a motion for leave to have this information protected under seal. However, Fresenius needs additional time to prepare the necessary motion and supporting declaration to establish the confidential and trade secret status of this information. Accordingly, Fresenius seeks an extension of an additional five court days, to and including June 28, 2007, to file the necessary motion and declaration.

Amgen and the Defendants, F. Hoffman-La Roche Ltd., Roche Diagnostics, GmbH, and Hoffman-La Roche Inc. (collectively “Roche”), have each given their prior consent to this Motion.

1. Background

Fresenius is not a party to this action.

Fresenius is a major supplier of products and services for individuals with chronic kidney failure. Fresenius operates more than 1,500 outpatient dialysis clinics in the U.S., and is also a major supplier of a variety of dialysis products and equipment, including dialysis machines, dialyzers and other dialysis-related supplies. As part of its business, Fresenius is a customer of Amgen and purchases Epogen™ from Amgen for use in treating patients.

The specific information at issue relates to certain of the pricing terms, in particular discounts, under which Fresenius purchases Epogen™ from Amgen. These pricing terms are considered to be highly confidential and trade secret information to Fresenius. The pricing terms were set forth in paragraph 8 of the Declaration of Mats Wahlstrom (“Wahlstrom Declaration”), who is President of Fresenius’ services division in North America. Amgen has submitted the Wahlstrom Declaration as Exhibit 4 to the Declaration of James M. Fraser in Support of Amgen’s Motion for Summary Judgment on Roche’s Antitrust and State Law Counterclaims (Docket No. 521).

These pricing terms are reflected in an agreement between Amgen and Fresenius. Apparently, Amgen also considers these pricing terms to be its own confidential and trade secret information, since Amgen has filed a Motion for Leave to File Under Seal Documents Containing Amgen’s Trade Secrets and Submitted in Connection with Amgen’s Motion for Summary Judgment on Roche’s Antitrust and State Law Counterclaims (Docket No. 523) in which Amgen seeks to protect this same information as confidential and trade secret (*see* Memorandum in Support, Docket No. 524, at 2).

2. **Conclusion**

In view of the foregoing, and particularly in view of the fact that Fresenius is not a party to this action, Fresenius respectfully submits that the short extension of time requested by this motion is reasonable, and respectfully requests an extension of time of five court days (to and including June 28, 2007) to file a motion for leave to have the pricing information set forth in the Wahlstrom Declaration protected under seal.

Dated: March 2, 2007

Respectfully submitted,
By: /s/ Mark J. Hebert
Mark J. Hebert (BBO No. 546,712)
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906
Counsel for Non-Party Fresenius
Medical Care Holdings, Inc.

Certification Pursuant to Local Rule 7.1(a)(2)

Undersigned counsel for Fresenius certifies that Fresenius has conferred in good faith in an effort to resolve the issues raised by this motion, and has received the consent of both Amgen and Roche for this motion. In particular, in a letter dated March 6, 2007, counsel for Roche, Julian Brew, consented to provide Fresenius with any necessary extension of the time permitted to seek leave to file trade secret material under seal as set forth in paragraph 14 of the Amended Protective Order, and on June 13, 2007 counsel for Amgen, Deborah Fishman, consented to any necessary extension of time requested by Fresenius to seek protection of its confidential information as a trade secret.

/s/ Mark J. Hebert
Mark J. Hebert

Certificate of Service

I hereby certify that this Assented-To Motion filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Mark J. Hebert
Mark J. Hebert

21670087.doc