

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**AMGEN INC.,**

**Plaintiff,**

**v.**

**CIVIL ACTION No. : 05-CV-12237-WGY**

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

**Defendants.**

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**NON-PARTY DAVITA'S ASSENTED-TO MOTION FOR LEAVE TO FILE UNDER  
SEAL DOCUMENTS CONTAINING NON-PARTY DAVITA'S TRADE SECRETS  
THAT WERE SUBMITTED BY ROCHE**

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Now comes DaVita Inc. (“DaVita”), which is not a party to this action, and moves, pursuant to Federal Rule of Civil Procedure 26(c)(7), Local Rule 7.2, and the protective order in this matter, for leave to have filed under seal documents and portions thereof submitted by Roche that contain DaVita’s trade secrets. Specifically, DaVita seeks the sealing of certain portions of Roche Exhibit 73, and the entirety of Roche Exhibit 210, both of which were submitted to the Court for its *in camera* review on June 29, 2007 in conjunction with Roche’s opposition to Amgen’s Motion for Summary Judgment on Roche’s Antitrust and State Law Counterclaims.<sup>1</sup>

As explained in the contemporaneously-filed Memorandum and Kogod Declaration, certain of the testimony on page 64 of deposition testimony submitted by Roche as Exhibit 73 (hereafter, the “Kogod Testimony”) is not related to the issues in dispute and for that reason should not be submitted or filed publicly. Moreover, lines 13-20 of page 61 and lines 9-10 and

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<sup>1</sup> The exhibit numbers referenced herein are derived from the Declaration of David L. Cousineau in Support of Roche’s Opposition to Amgen’s Motion for Summary Judgment on Roche’s Antitrust and State Law Counterclaims (Docket #589), filed by Roche on June 29, 2007.

24-25 of page 64 of the Kogod Testimony and Roche Exhibit 210 contain DaVita's trade secrets, the public disclosure of which would irreparably harm DaVita. In these circumstances, DaVita is entitled to an order limiting its disclosure, pursuant to Federal Rule of Civil Procedure 26(c)(7), Local Rule 7.2, and the protective order in this matter.

#### REQUEST FOR ORAL ARGUMENT

In accordance with Local Rule 7.1, DaVita hereby respectfully requests that the Court schedule an oral argument with respect to the instant motion.

WHEREFORE, non-party DaVita respectfully requests that lines 13-20 of page 61 and lines 9-10 and 24-25 of page 64 of the deposition testimony of Dennis Kogod submitted by Roche as Exhibit 73 be kept under seal and redacted before such document is placed into the public record. DaVita also respectfully requests that Roche Exhibit 210 remain under seal in its entirety and not be filed in the public record. In addition, in accordance with Local Rule 7.1(d), DaVita further requests that the Court schedule an oral argument on the instant motion.

Dated: July 6, 2007

**DAVITA INC.**

By: /s/ Christopher J. Petrini  
Christopher J. Petrini (BBO# 556848)  
Peter L. Mello (BBO# 659680)  
Petrini & Associates, P.C.  
The Meadows  
161 Worcester Road, Suite 304  
Framingham, MA 01701  
Telephone: (508) 665-4310  
Facsimile: (508) 665-4313

Christian T. Kemnitz  
Michelle T. McGuinness  
Katten Muchin Rosenman LLP  
525 W. Monroe  
Chicago, IL 60661  
Telephone: (312) 902-5200

Facsimile: (312) 902-1061

*Counsel for Non-Party DaVita Inc.*

**CERTIFICATE PURSUANT TO LOCAL RULE 7.1(a)(2)**

Undersigned counsel for DaVita certifies that DaVita has conferred in good faith with counsel for Amgen and Roche in an effort to resolve or narrow the issues raised by this motion, and has received consent of both Amgen and Roche for this motion. Specifically, David Cousineau, counsel for Roche, confirmed Roche's assent to DaVita's motion in an e-mail dated July 5, 2007. In a telephone call with me on July 5, 2007, Deborah Fishman, counsel for Amgen, indicated that, barring any further communications, DaVita could proceed with filing an assented-to motion for leave to file under seal the designated testimony and exhibit. At the time of filing, I had not heard of any objections by Amgen.

/s/ Michelle T. McGuinness  
MICHELLE T. McGUINNESS

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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.

/s/ Peter L. Mello

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Peter L. Mello