

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

AMGEN INC,

Plaintiff,

v.

C.A. No. 05-12237-WGY

F. HOFFMAN-LA ROCHE LTD., a Swiss  
Company, ROCHE DIAGNOSTICS GmbH, a  
German Company, and HOFFMAN-LA  
ROCHE INC., a New Jersey Corporation

Defendants.

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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 ROCHE  
PROTECTED UNDER SEAL

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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 certain documents that may contain Fresenius' confidential and trade secret information protected under seal.

The specific Fresenius documents at issue were submitted to chambers by Defendants/Counter Claimant F. Hoffman-La Roche Ltd., Roche Diagnostics, GmbH, and Hoffman-La Roche Inc., (collectively "Roche" or "Defendants"), on June 29, 2007 as Exhibits 69, 76, 77 and 86 to 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 No. 589). Under the current protective order in this case, Fresenius understands that it has four court days (*i.e.*, until July 6, 2007) to file a motion for leave to have this information

protected under seal. However, Fresenius needs additional time to further investigate and prepare any 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 July 13, 2007, to file any necessary motion and declaration. Amgen Inc. (“Amgen”) and 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 which Fresenius may file under seal relates to pricing, budgeting, purchasing and treatment methods employed by Fresenius. This information is disclosed in documents filed by Roche in support of its Response to Amgen’s Statement of Undisputed Material Facts Pursuant to Local Rule 56.1 (Docket No. 587) as Exhibits 69, 76, 77 and 86, which have been filed *in camera*.

**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 Jul 13, 2007) to file a motion for leave to have Fresenius’ trade secret information set

forth in Exhibits 69, 76, 77 and 86 of Roche's Response to Amgen's Statement of Undisputed Material Facts Pursuant to Local Rule 56.1 protected under seal.

Respectfully submitted,

Dated: July 6, 2007

By: /s/ Mark J. Hebert  
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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