

**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.

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

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 a portion of a document submitted by defendant Hoffman-LaRoche Inc. ("Roche") that contains DaVita's trade secrets. Specifically, DaVita seeks the sealing of a certain portion of Dennis Kogod's deposition testimony, which was submitted by Roche on July 12, 2007 for the courts *in camera* review in conjunction with Roche's opposition to Amgen's Motion to Exclude the Expert Testimony of Dr. Lauren J. Stiroh.

As explained in the contemporaneously-filed Memorandum and Kogod Declaration, certain of the testimony on page 17 of deposition testimony submitted by Roche (hereafter, the "Kogod Testimony") is not related to the issues in dispute and for that reason should not be submitted or filed publicly. Lines 7-10 of the Kogod Testimony contain DaVita's trade secrets, the public disclosure of which would irreparably harm DaVita. In these circumstances, DaVita is

entitled to an order limiting disclosure of lines 7-10, pursuant to Federal Rule of Civil Procedure 26(c)(7).

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 7-10 of page 17 of the deposition testimony of Dennis Kogod submitted by Roche be kept under seal and redacted before such document is placed into the public record.

Dated: July 18, 2007

DAVITA INC.

By: /s/ Christopher J. Petrini
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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 regarding 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 email dated July 17, 2007. Similarly, Deborah Fishman, counsel for Amgen, confirmed Amgen's assent to DaVita's motion in an email also dated July 17, 2007.

/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

PETER L. MELLO