

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN INC.,

Plaintiff

v.

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

Defendants

05 CV 12237 WGY

**NON PARTY FRESENIUS' UNOPPOSED MOTION FOR LEAVE TO FILE UNDER
SEAL DOCUMENTS CONTAINING FRESENIUS' TRADE SECRETS, FILED BY
DEFENDANT ROCHE, OR IN THE ALTERNATIVE, FOR A STAY PENDING
APPEAL OR RESOLUTION OF THE PATENT TRIAL**

Non-Party Fresenius Medical Care Holdings, Inc., d/b/a Fresenius Medical Care North America ("Fresenius"), hereby moves for leave to file under seal certain documents containing Fresenius' confidential trade secret information that were filed by Roche in connection with the above-captioned action. Specifically, Fresenius submits that its confidential trade secret information revealed in Exhibits 257 and 259 to the Supplemental Declaration of David Cousineau in Further Support of Roche's Opposition to Amgen's Motion for Summary Judgment on Roche's Antitrust and State Law Counterclaims, filed by Roche on July 16, 2007 (Docket No. 745) ("Roche Exhibits 257 and 259"), as well as information in Exhibit 85 to the Declaration of David Cousineau in Support of Roche's Opposition to Amgen's Motion for Summary Judgment on Roche's Antitrust and State Law Counterclaims filed by Roche on June 29, 2007 (Docket No. 589) ("Roche Exhibit 85") should not be disclosed to the public.

As explained more fully in the accompanying Memorandum, Fresenius requests that the volume discount percentages from two rows of Exhibits 257 and 259 as well as the percentage of total discount to Fresenius from page 57 of Roche Exhibit 85 be redacted before those

documents are filed in the public record. This information constitutes Fresenius' confidential and trade secret information and should not be disclosed in the public record.

As grounds for this motion, Fresenius relies on the accompanying Memorandum, Declaration of Robert McGorty In Support of Non-Party Fresenius' Unopposed Motion For Leave To File Under Seal Documents Containing Fresenius' Trade Secrets, Filed By Roche, Or In The Alternative, For A Stay Pending Appeal Of Resolution Of The Patent Trial, Declaration of Nicole E. Gage, and Declaration of Mark J. Hebert.

This motion is timely as Fresenius only found out about the filing of such information, which was submitted to the Court for *in camera* review, within the last few days.

WHEREFORE, non-party Fresenius respectfully requests that it be granted leave to have its volume discount information from Roche Exhibits 257 and 259 and the total discount percentage in Roche Exhibit 85 filed under seal or in the alternative that public disclosure of such information be stayed pending appeal or at least until after resolution of the patent issues.

Dated July 30, 2007

Respectfully submitted,

By: /s/ Nicole E. Gage
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Counsel for Non-Party Fresenius
Medical Care Holdings, Inc.

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

Counsel for Fresenius certifies that Fresenius has conferred in good faith with counsel for Amgen and Roche in an effort to resolve or narrow the issues raised by this motion in telephone conferences on July 25, 2007 and July 26, 2007. Manvin Mayell, counsel for Roche,

has stated that Roche will not oppose this Motion, and Daniel Curto, counsel for Amgen, has stated that Amgen consents to this motion.

/s/ Nicole E. Gage
Nicole E. Gage

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).

/s/ Nicole E. Gage
Nicole E. Gage

Dated: July 30, 2007