

**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 THIRD UNOPPOSED MOTION
FOR LEAVE TO FILE UNDER SEAL DOCUMENTS CONTAINING NON-PARTY
DAVITA'S TRADE SECRETS THAT WERE SUBMITTED BY ROCHE,
OR IN THE ALTERNATIVE, FOR A STAY PENDING APPEAL**

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 portions of documents submitted by defendant Hoffman-LaRoche Inc. ("Roche") that contain DaVita's trade secrets. Specifically, DaVita seeks the sealing of: (1) footnote 224 of a report prepared by expert witness Einer Elhauge ("Footnote 224"), excerpts of which were submitted by Roche as Exhibit 85,¹ which reveals the substance of confidential negotiations between Amgen and DaVita regarding a new supply agreement for Epogen®; and (2) Roche Exhibit 209, which is a "term sheet" created by Amgen and reflects price negotiations between Amgen and DaVita, both of which were submitted by

¹ 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.

Roche in conjunction with Roche's Opposition to Amgen's Motion for Summary Judgment on Roche's Antitrust and State Law Counterclaims.

As explained in the contemporaneously-filed Memorandum and Kogod Declaration, Footnote 224 and Roche Exhibit 209 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 these materials, pursuant to Federal Rule of Civil Procedure 26(c)(7).

In the alternative, DaVita asks that if this Court denies its request, the Court stay that order pending an appeal to the United States Court of Appeals for the Federal Circuit.

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 Footnote 224 and Roche Exhibit 209 be placed under seal and be redacted before being placed into the public record.

Dated: July 30, 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 determined that neither Amgen nor Roche is opposed this motion. Specifically, David Cousineau, counsel for Roche, stated that Roche was taking no position on DaVita's motion to seal in an email dated July 27, 2007. Patricia Rich, counsel for Amgen, confirmed Amgen's assent to DaVita's motion in an email dated July 30, 2007.

/s/ Christian T. Kemnitz
CHRISTIAN T. KEMNITZ

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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