

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

 AMGEN INC.,)
)
 Plaintiff,)
)
 v.)
)
)
 F. HOFFMANN-LAROCHE)
 LTD., a Swiss Company, ROCHE)
 DIAGNOSTICS GmbH, a German)
 Company and HOFFMANN LAROCHE)
 INC., a New Jersey Corporation,)
)
 Defendants. _____)

C.A. NO.: 05-12237-WGY

AMGEN INC.’S MOTION TO FILE DOCUMENTS UNDER SEAL

Pursuant to Local Rule 7.2(e), Plaintiff Amgen Inc. (“Amgen”) hereby moves this Court for leave to file certain documents under seal in connection with Amgen’s filing of a status report with the Court regarding the parties’ compliance with the Court’s May 11, 2006 Memorandum and Order. The documents Amgen seeks to file under seal are five (5) declarations received from counsel for F. Hoffmann LaRoche Ltd., Roche Diagnostics GmbH and Hoffmann LaRoche, Inc. (collectively “Roche”).

On May 22, 2006, Roche requested, and Amgen agreed, to enter into a Stipulated Temporary Protective Order (the “Temporary Protective Order”). The Temporary Protective Order was filed with the Court on May 23, 2006. The documents Amgen seeks to file under seal (the five (5) declarations) were provided by Roche to Amgen pursuant to the Temporary Protective Order. Therefore, in light of the confidential designation Roche has given these documents, Amgen seeks to file the documents under seal in this action.

In addition, the five (5) declarations that Amgen seeks to file under seal were previously provided to Amgen in connection with Investigation Number 337-TA-568 entitled: In the Matter of Certain Products and Pharmaceutical Compositions Containing Recombinant Human Erythropoietin before the United States International Trade Commission (“Amgen’s ITC Proceeding”). In Amgen’s ITC Proceeding, the ITC Commission entered a Protective Order (the “ITC Protective Order”). The ITC Protective Order provides, in part, that:

5. Confidential business information obtained in the Commission proceeding may be used with the consent of the supplier in a parallel district court proceeding under a protective order issued by the district court without losing its confidential status under the protective order in this proceeding as long as the information is not made public in the district court proceeding or by someone who obtains the information from that source or by anyone else.

The five (5) declarations Amgen seeks to file under seal were originally produced by Roche to Amgen pursuant to the ITC Protective Order, and were designated by Roche to be Confidential business information and are affixed with the legend “Roche’s Confidential Business Information, Subject to Protective Order,” as required by the ITC Protective Order. Therefore, in light of the confidential designation Roche has given these documents and in order to comply with the ITC Protective Order, Amgen seeks to file the documents under seal in this action.

WHEREFORE, Amgen respectfully requests that the Court grant its motion for leave to file the above-described documents under seal and that should the Court grant this motion as requested, that the Court order that the documents remain under seal until such time as a further order of the Court issues.

Dated: May 25, 2006

Respectfully Submitted,

AMGEN INC.,
By its attorneys,

Of Counsel:

STUART L. WATT
WENDY A. WHITEFORD
MONIQUE L. CORDRAY
DARRELL DOTSON
MARY SUSAN HOWARD
KIMBERLIN MORLEY
AMGEN INC.
One Amgen Center Drive
Thousand Oaks, CA 91320-1789
(805) 447-5000

/s/ Michael R. Gottfried
D. DENNIS ALLEGRETTI (BBO#545511)
MICHAEL R. GOTTFRIED (BBO#542156)
PATRICIA R. RICH (BBO# 640578)
DUANE MORRIS LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210
Telephone: (617) 289-9200
Facsimile: (617) 289-9201

LLOYD R. DAY, JR.
DAVID M. MADRID
LINDA A. SASAKI-BAXLEY
DAY CASEBEER MADRID & BATCHELDER LLP
20300 Stevens Creek Boulevard, Suite 400
Cupertino, CA 95014
Telephone: (408) 873-0110
Facsimile: (408) 873-0220

WILLIAM GAEDE III
McDERMOTT WILL & EMERY
3150 Porter Drive
Palo Alto, CA 94304
Telephone: (650) 813-5000
Facsimile: (650) 813-5100

MICHAEL F. BORUN
KEVIN M. FLOWERS
MARSHALL, GERSTEIN & BORUN LLP
233 South Wacker Drive
6300 Sears Tower
Chicago IL 60606
Telephone: (312) 474-6300
Facsimile: (312) 474-0448

CERTIFICATE PURSUANT TO LOCAL RULE 7.1

I certify that counsel for the parties have conferred in an attempt to resolve or narrow the issues presented by this motion and that counsel for F. Hoffman-LaRoche Ltd., Hoffman LaRoche Inc., Roche Diagnostics, GmbH, and they have not agreed to the public filing of the documents referenced herein.

/s/ Michael R. Gottfried
Michael R. Gottfried

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 and paper copies will be sent to those indicated as non registered participants on May 25, 2006.

/s/ Michael R. Gottfried
Michael R. Gottfried