

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
AMGEN INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	CIVIL ACTION No.: 05-CV-12237WGY
F. HOFFMANN-LA ROCHE LTD,	)	
ROCHE DIAGNOSTICS GMBH,	)	
AND HOFFMANN-LA ROCHE INC.,	)	
	)	
Defendants	)	
_____	)	

**DEFENDANTS’ RESPONSE TO AMGEN INC.’S  
MOTION TO FILE DOCUMENTS UNDER SEAL**

Defendants Hoffman-La Roche Inc. (“Roche U.S.”), F. Hoffman-La Roche Ltd (“Roche Swiss”), and Roche Diagnostics GmbH (“Roche Germany”) (collectively, “Defendants”) hereby respond to the Motion for Leave to File Documents Under Seal, filed by plaintiff Amgen Inc. (“Amgen”) of even date herewith. While Defendants agree that their confidential documents should not be filed in the public record, Defendants believe that the documents are irrelevant to this proceeding and should not be filed at all. In the event that the Court permits the filing of the documents, however, Defendants join in Amgen’s request that they be filed under seal.

**The Documents Sought to be Filed are No Longer Relevant Since  
the Motions to Dismiss for Lack of Personal Jurisdiction Were Withdrawn**

On May 10, 2006, the Court heard oral argument on the motions of Roche Swiss and Roche Germany to dismiss for lack of personal jurisdiction.<sup>1</sup> The Court took the motions under

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<sup>1</sup> At the same time, the Court heard oral argument on a motion to dismiss for failure to state a claim filed by all Defendants, and a motion by Ortho Biotech Products, L.P. to intervene as a plaintiff in the action. Those motions are still pending.

advisement, and ordered the parties “to confer as to the corporate relationship between the various Roche/Hoffman-LaRoche corporate entities and the allegedly infringing drug” and “report back to the Court within 10 days as to the nature of the corporate relationship of these entities.” Order dated May 11, 2006. It is pursuant to this Order that Amgen now seeks to file five declarations containing Defendants’ confidential information.

On May 18, 2006, Roche Swiss and Roche Germany withdrew their motions to dismiss and sent a letter to the Court the same day explaining the circumstances of the withdrawal. Thus, the Court’s Order of May 11, 2006 is now moot, and there is no need for the Court to receive further evidence regarding the relationship between Defendants.

**In the Event That The Court Permits The Filing of the Confidential Documents,  
They Should Be Approved for Filing Under Seal**

In the event that the Court still wishes to receive further evidence of the relationship between the Defendants despite the withdrawal of the motions for lack of personal jurisdiction, and allows Amgen to file the documents at issue, Defendants join in Amgen’s request that they be approved for filing under seal. Amgen seeks to file five declarations produced by Defendants, which contain Defendants’ confidential information. As Amgen’s motion states, the declarations were produced to Amgen by Defendants in the ITC proceeding subject to a Protective Order, and were properly designated as containing “Roche’s Confidential Business Information, Subject to Protective Order.” Thus, if Amgen files the materials in the public record of this proceeding, it will be in violation of the ITC’s Protective Order. Moreover, the parties anticipated that such materials would need to be treated as confidential in this case, as they entered into a Stipulation for a Temporary Protective Order, which was filed with the Court on May 23, 2006, to ensure that any confidential documents exchanged by the parties pursuant to the Court’s Order of May

11, 2006 would be treated as confidential and disclosed to only the parties' outside litigation counsel. Accordingly, if the Court allows Amgen to file the five declarations over Defendants' objections, they should be filed under seal.

DATED: Boston, Massachusetts  
May 25, 2006

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

By its attorneys,

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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 on the above date.

/s/ Julia Huston