UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HOPEWELL PHARMA VENTURES, INC.,
Petitioner

v.

MERCK SERONO S.A.,
Patent Owner

Case IPR2023-00480
U.S. Patent No. 7,713,947

PETITIONER HOPEWELL PHARMA VENTURES, INC.'S MOTION TO SEAL EXHIBITS 1059, 1060, 1063, 1080, 1084, AND PETITIONER'S REPLY

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I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner Hopewell Pharma Ventures, Inc. ("Hopewell") respectfully submits this Motion to Seal Exhibits 1059, 1060, 1063, 1080, 1084, and the Petitioner's Reply (collectively "the Confidential Documents"). The parties have met and conferred regarding the Motion to Seal, as required by 37 C.F.R. § 42.54(a), and Patent Owner Merck Serono, S.A. ("Merck") has stated it will not oppose this motion.

All of the confidential material submitted in this proceeding belongs to Merck. Good cause to seal exists because Merck has represented to Hopewell that certain information in the Confidential Documents is "highly confidential, competitively sensitive information." Mot. To Seal And For Entry of Default Protective Order, 2, *Hopewell Pharma Ventures, Inc. v. Merck Serono SA*, IPR2023-00480 (P.T.A.B. Dec. 21, 2023) ("Paper 19"). Hopewell therefore submits this Motion to Seal under the Default Protective Order in this case. *See* Paper 19.

II. GOVERNING RULES AND PTAB GUIDANCE

While under 35 U.S.C. § 316(a)(1), papers filed in an *inter partes* review are generally open and available for access by the public, a party may file a concurrent Motion to Seal to protect public disclosure of certain confidential information, which has the effect of sealing the information at issue pending resolution of the

motion. In determining whether to grant a Motion to Seal, the Board must find "good cause," 37 C.F.R. § 42.54(a), and "strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information," Consolidated Trial Practice Guide, November 2019 ("TPG"), 19. The Board identifies confidential information in a manner "consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for … confidential research, development, or commercial information." TPG, 19.

Based on the procedure set forth in the TPG, Hopewell seeks to prevent the disclosure of sensitive information that Merck has represented is contained in the Confidential Documents.

III. IDENTIFICATION OF CONFIDENTIAL DOCUMENTS

The Confidential Documents at issue here comprise Exhibits 1059, 1060, 1063, 1080, 1084, and Hopewell's Reply, which quotes and characterizes those exhibits and the exhibits previously filed under seal by Merck (Exhibits 2048, 2049, and 2050). Paper 19, 4–7. Under the terms of the Default Protective Order filed by Merck in this case on December 21, 2023, documents so designated must be filed under seal. Default Protective Order, ¶5(A)(i).

A. Exhibits 1059, 1060, and 1063

Exhibits 1059, 1060, and 1063 are the deposition transcripts of Drs. Nicholas Bodor, Yogesh Dandiker, and Alain Munafo, respectively. Merck designated and marked Exhibits 1059, 1060, and 1063 as "CONFIDENTIAL" under the proposed Default Protective Order in this proceeding. Default Protective Order, ¶5(A)(i)-(ii).

With respect to Exhibit 1059, Merck served a redacted copy identifying the portions of the testimony to which a claim of confidentiality is to be maintained, as required by the terms of the Default Protective Order, Appendix B, Section (d)6. Merck did not indicate why these portions of testimony disclosed confidential protective order material. This redacted copy will be made publicly available. Hopewell only moves to file the unredacted copy of Exhibit 1059 under seal. Default Protective Order, ¶5(A)(ii).

With regard to Exhibits 1060 and 1063 (Dandiker and Munafo deposition transcripts), Merck has agreed to Hopewell to filing Exhibits 1060 and 1063 under seal in their entirety.

B. Exhibits 1080 and 1084

Exhibits 1080 and 1084 are the declarations of Dr. Rodolfo Pinal and Dr. Aaron Miller, respectively. Exhibits 1080 and 1084 cite the Confidential Documents. Merck has agreed to Hopewell filing Exhibits 1080 and 1084 under

seal in their entirety.

C. Hopewell's Reply

Hopewell has, to the best of its ability, limited material in its Reply to non-confidential information. However, it nonetheless is necessary for the Reply to quote and characterize Exhibits 1059, 1060, 1063, 1080, and 1084, as well as Merck's sealed Exhibits 2048, 2049, 2050. Merck has agreed to Hopewell filing the Reply under seal in its entirety.

* * *

To the best of Hopewell's knowledge, and based on Merck's representation that the Confidential Documents and the information contained therein are indeed confidential, the information sought to be sealed has not been published or otherwise made public.

IV. GOOD CAUSE EXISTS FOR SEALING THE CONFIDENTIAL INFORMATION.

The standard for granting a motion to seal is "good cause." *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34 at 3 (P.T.A.B. Mar. 14, 2013). This requires the Board to "strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 36 at 4 (P.T.A.B. Apr. 5, 2013). Good cause can be established by demonstrating that (1) the information sought to be sealed is

truly confidential, (2) concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4) on balance, the interest in maintaining confidentiality outweighs the strong public interest in having an open record. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 4 (P.T.A.B. Jan. 19, 2018).

Merck previously submitted Exhibits 2048, 2049, and 2050 under seal, stating that they contained "confidential technical information regarding drug development and/or financial and business information of [Merck] and non-parties" in this proceeding, which are "subject to non-party confidentiality obligations." Paper 19, 4. The Confidential Documents relate at least in part to Exhibits 2048, 2049, and 2050, which Merck has stated would cause "competitive business harm" to Merck if publicly disclosed. *Id.*, 4-5. To the best of Hopewell's knowledge, the same risk of concrete harm to non-parties applies to Exhibits 1059, 1060, 1063, 1080, 1083, and Petitioner's Reply. Further, because of the nature and extent of the Confidential Documents, there is a genuine need for Hopewell to quote and characterize the Confidential Documents throughout Hopewell's Reply. But due to the competitive harm that Merck has asserted, which Petitioner currently has no reason to doubt extends to the Confidential Documents, the interest in maintaining confidentiality outweighs the strong public interest in maintaining a public record.

V. RELIEF REQUESTED

For the reasons stated above, Hopewell requests that the Board seal and protect the Confidential Documents according to the proposed Default Protective Order in this case.

VI. CONCLUSION

For the foregoing reasons, Hopewell respectfully requests that the Board seal Exhibits 1059, 1060, 1063, 1080, 1084, and the Petitioner's Reply according to the Default Protective Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PETITIONER HOPEWELL PHARMA VENTURES, INC.'S MOTION TO SEAL EXHIBITS 1059, 1060, 1063, 1080, 1084, AND PETITIONER'S REPLY** was served in its entirety on April 5, 2024, upon the following parties via electronic mail:

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