

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
Patent 7,713,947 B2

**PATENT OWNER'S UNOPPOSED MOTION TO EXPUNGE
CONFIDENTIAL INFORMATION**

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.56, Patent Owner Merck Serono S.A. respectfully requests that the following twelve currently sealed documents containing Patent Owner's confidential information (collectively, "the Confidential Documents") be expunged from the record:

- Paper 41: Petitioner's Reply;
- Paper 56: Patent Owner's Demonstrative Exhibits;
- Paper 62: Final Written Decision;
- Paper 68: Patent Owner's Notice of Appeal;
- Exhibit 1059: Bodor Deposition Transcript;
- Exhibit 1060: Dandiker Deposition Transcript;
- Exhibit 1063: Munafo Deposition Transcript;
- Exhibit 1080: Pinal Declaration;
- Exhibit 1092: Petitioner's Demonstratives;
- Exhibit 2048: Ares Agreement;
- Exhibit 2049: Briefing Document December 17, 2003; and

- Exhibit 2050: Meeting Minutes August 27, 2003.¹

Patent Owner has conferred with Petitioner Hopewell Pharma Ventures, Inc., and Petitioner does not oppose this motion.

II. APPLICABLE LEGAL STANDARDS

37 C.F.R. § 42.56 provides that following “denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.” The Trial Practice Guide states that “[t]here is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial.” Consolidated Trial Practice Guide, November 2019, at 21-22. However, the Trial Practice Guide also states that a party “seeking to maintain the confidentiality of information ... may file a motion to expunge the information from the record prior to the information becoming public.” *Id.*

Even though more than 45 days have passed since the final conclusion of the Federal Circuit appeal in this proceeding (*see id.*), Patent Owner respectfully

¹ This Motion is limited to the twelve Confidential Documents identified herein, and Patent Owner does not seek to expunge Paper 61, which is currently under seal.

submits that the motion to expunge, which is being filed prior to the Confidential Documents being made public, should be granted in the interest of justice. *See Netflix, Inc. and Hulu, LLC v. Divx, LLC*, IPR2020-00614, Paper 78 at 3-4 (P.T.A.B. May 28, 2025) (finding motion to expunge “was not untimely because it was filed prior to the Exhibits being made public”). Additionally, Patent Owner further notes that the *inter partes* review certificate for this proceeding was only mailed on July 15, 2026. *See* '947 patent file history, *inter partes* review certificate (July 15, 2026).

A party seeking expungement from the record must show good cause by demonstrating “that any information sought to be expunged constitutes confidential information, and that [the party]’s interest in expunging it outweighs the public’s interest in maintaining a complete and understandable history of this *inter partes* review.” *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 97 at 2 (P.T.A.B. Apr. 15, 2015).

III. GOOD CAUSE EXISTS FOR EXPUNGING THE CONFIDENTIAL PAPERS AND EXHIBITS

The Confidential Documents contain confidential research, development, or business information that would cause competitive business harm to Patent Owner and non-parties if publicly disclosed. The Confidential Documents are designated “CONFIDENTIAL - PROTECTIVE ORDER MATERIAL” and “PROTECTIVE

ORDER MATERIAL” under the protective order entered in this proceeding. Redacted versions of many of the Confidential Documents have been provided and are currently available to the public. The table below summarizes the Confidential Documents (left column) and any corresponding redacted, publicly-available versions (right column).

Confidential Document	Redacted, Public Version
Paper 41: Petitioner's Reply	Paper 65
Paper 56: Patent Owner's Demonstrative Exhibits	Sealed in its entirety
Paper 62: Final Written Decision	Paper 63
Paper 68: Patent Owner's Notice of Appeal	Paper 69
Exhibit 1059: Bodor Deposition Transcript	Exhibit 1059
Exhibit 1060: Dandiker Deposition Transcript	Exhibit 1060
Exhibit 1063: Munafo Deposition Transcript	Exhibit 1063
Exhibit 1080: Pinal Declaration	Exhibit 1080
Exhibit 1092: Petitioner's Demonstratives	Sealed in its entirety
Exhibit 2048: Ares Agreement	Sealed in its entirety
Exhibit 2049: Briefing Document December 17, 2003	Sealed in its entirety
Exhibit 2050: Meeting Minutes August 27, 2003	Sealed in its entirety ²

² Redacted versions of Exhibits 2048-2050 are publicly available as Exhibits 2077-2079 in *TWi Pharmaceuticals, Inc. v. Merck Serono S.A.*, IPR2023-00049 (P.T.A.B. May 15, 2024) and *TWi Pharmaceuticals, Inc. v. Merck Serono S.A.*,

In this proceeding, the Board previously found good cause to seal Papers 41 and 56 and Exhibits 1059, 1060, 1063, 1080, 1092, 2048, 2049, and 2050, which account for ten of the twelve Confidential Documents. *See* Paper 63 at 90-91; Paper 66 at 2-4. The Board recognized good cause to seal Exhibits 2048, 2049, and 2050 because they “include confidential research and development information.” *See* Paper 63 at 90-91. As set forth in Patent Owner's motion to seal, Exhibits 2048, 2049, and 2050 detail Patent Owner's drug development activities, business strategies, drug commercialization strategies, and commercial and financial provisions, including a roadmap of how to replicate Patent Owner's confidential and valuable drug product development and business model; public disclosure of such information would cause competitive harm to Patent Owner and non-parties. Paper 19 at 4–7. Furthermore, the information in these exhibits is subject to non-party confidentiality obligations with Patent Owner's development partners and Patent Owner's predecessor and affiliate. Paper 19 at 4, 7.

The Board granted the parties' motions to seal their respective demonstratives, Paper 56 and Exhibit 1092, because the demonstratives were not “substantively relied on.” *See* Paper 63 at 91, 93; *see also* Paper 54; Paper 55.

IPR2023-00050 (P.T.A.B. May 15, 2024). Should the Board wish, Patent Owner will file those redacted versions of Exhibits 2048-2050 in this proceeding.

Although the parties did not submit redacted versions, the Board determined that “the absence of redacted versions does not impede the public’s interest in an open and understandable record.” Paper 63 at 91. The parties’ motions to seal explained that Paper 56 contained confidential excerpts from Exhibits 1063, 2049, and 2050, and that Exhibit 1092 included confidential excerpts from Exhibits 2048, 2049, and 2050. Paper 55 at 4; Paper 54 at 2-4.

The Board found good cause to seal Paper 41 and Exhibits 1059, 1060, 1063, 1080, for which Petitioner filed redacted versions, because the redactions to those documents “comprise[] confidential research and/or development information” that “Patent Owner has already established a sufficient interest in protecting ... from public disclosure.” Paper 66 at 4. The Board determined that the redactions to the documents are “minimal” and do “not materially impair[]” “the public’s interest in an open and understandable record.” Paper 66 at 4.

As for the two remaining Confidential Documents, minimally redacted versions of both Paper 62 (Final Written Decision) and Paper 68 (Patent Owner’s Notice of Appeal) are publicly available in this proceeding (as Papers 63 and 69, respectively), providing the public with more than enough information to “maintain[] a complete and understandable history” of the proceeding and to understand the basis for the Board’s determinations. *Atlanta Gas Light*, Paper 97 at 2-3. None of the Board’s analysis in its Final Written Decision is confidential.

The limited redactions in the Final Written Decision comprise confidential information from Exhibit 2050, the August 27, 2003 Meeting Minutes between Patent Owner's development partner and affiliate. Paper 62 at 32, 39. Those meeting minutes concern the ongoing joint research and development efforts of non-parties to this proceeding and contain confidential technical data, prospective research plans, and clinical development plans. *See* Ex. 2050; Paper 19 at 6-7. Patent Owner's Notice of Appeal attaches the Final Written Decision, and the only redactions are the same confidential material redacted from the Final Written Decision. *See* Paper 68; Paper 69.

In the Federal Circuit appeal arising from this proceeding, the confidential information in the Confidential Documents remained sealed. *See Merck Serono S.A. v. Hopewell Pharma Ventures, Inc.*, Nos. 25-1210, -1211, Dkt. 43 (Confidential Joint Appendix filed May 14, 2025). The basis for the Federal Circuit's affirmance of the Board's decision is completely understandable without the confidential information in the Confidential Documents. Therefore, expunging the Confidential Documents would not prejudice the public's ability to fully understand the determinations of patentability made both in this proceeding and the appeal.

Accordingly, good cause exists for protecting Patent Owner's confidential information by expunging the Confidential Documents.

IV. CONCLUSION

For the above reasons, Patent Owner respectfully requests that the Board protect Patent Owner's confidential information by expunging the Confidential Documents pursuant to 37 C.F.R. § 42.56.

V. REQUEST FOR CONFERENCE CALL WITH THE BOARD

Should the Board not be inclined to grant the present Motion to Expunge, Patent Owner hereby requests a conference call with the Board to discuss any concerns prior to the Board issuing a decision on the Motion.

Respectfully submitted,

Dated: September 23, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2026, I caused a true and correct copy of the foregoing materials:

- Motion to Expunge Confidential Information

to be served via email as previously agreed by the parties to the following attorneys of record:

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