

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 IPR2023-00481
U.S. Patent No. 8,377,903

**PETITIONER HOPEWELL PHARMA VENTURES, INC.’S
RENEWED MOTION TO SEAL EXHIBITS 1059, 1060, 1063, 1080, AND
PETITIONER’S REPLY**

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I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54 and the Board’s September 18, 2024 Judgment and Final Written Decision (Paper 62), Petitioner Hopewell Pharma Ventures, Inc. (“Hopewell”) respectfully submits this Renewed Motion to Seal portions of Exhibits 1059, 1060, 1063, 1080, and Petitioner’s Reply as reflected by the accompanying redactions (collectively “the Confidential Documents”).¹ *See, e.g.*, Paper 62 at 91. Petitioner initially filed an unopposed Motion to Seal the Confidential Documents on April 5, 2024 (Paper 42). On September 18, 2024, the Board denied without prejudice Petitioner’s April 5, 2024 Motion and permitted Petitioner to refile the motion within twenty days with minimally redacted, public versions of the Confidential Documents. Paper 62 at 91, 93. The parties have met and conferred regarding this Motion, 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. Merck marked Exhibits 2048, 2049, and 2050 as confidential and has represented to Hopewell that certain information in the Confidential Documents is “highly confidential, competitively sensitive information.” Mot. To Seal And For

¹ Petitioner no longer requests sealing Exhibit 1084.

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). Additionally, the PTAB has granted Merck’s motion to seal Exhibits 2048, 2049, and 2050. Paper 62 at 91, 93. Because good cause to seal the Confidential Documents exists, Hopewell 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 portions of Exhibits 1059, 1060, and 1063 (which Merck identified as confidential under the terms of the Default Protective Order, Appendix B, Section (d)6), as well as Exhibit 1080 and Hopewell's Reply (which quote and characterize 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).

Merck served a redacted copy of these exhibits 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. The redacted copy of these exhibits submitted herewith will be made publicly available. Hopewell moves to file the unredacted copy of Exhibits 1059, 1060, and 1063 under seal. Default Protective Order, ¶5(A)(ii).

B. Exhibit 1080

Exhibit 1080 is the declaration of Dr. Rodolfo Pinal. Hopewell has, to the best of its ability, limited material in its Exhibit 1080 to non-confidential information. However, it nonetheless is necessary for Exhibit 1080 to quote from a redacted portion of Exhibit 1060. The redacted copy of Exhibit 1080 submitted herewith will be made publicly available. Hopewell moves to file the unredacted copy of Exhibit 1080 under seal. Default Protective Order, ¶5(A)(ii).

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 the redacted portions of Exhibits 1060 and 1063, as well as Merck's sealed Exhibits 2049 and 2050. The redacted copy of the Reply submitted herewith will be made publicly available. Hopewell moves to file the unredacted copy of the Reply under seal. Default Protective Order, ¶5(A)(ii).

* * *

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 the redacted portions of Exhibits 1059, 1060, 1063, 1080, 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 in 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 portions of Exhibits 1059, 1060, 1063, 1080, and Petitioner’s Reply, as reflected by the accompanying redactions, 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, AND PETITIONER’S REPLY** was served in its entirety, along with the redacted copies of Exhibits 1059, 1060, 1063, 1080, and Petitioner’s Reply, on October 8, 2024, upon the following parties via electronic mail:

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