

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.

IPR2023-00480 (Patent 7,713,947 B2)
IPR2023-00481 (Patent 8,377,903 B2)¹

Before ZHENYU YANG, ROBERT A. POLLOCK, and
TIMOTHY G. MAJORS, *Administrative Patent Judges*.

MAJORS, *Administrative Patent Judge*.

ORDER
Granting Petitioner's Renewed Motion to Seal (Paper 64)
37 C.F.R. § 42.14

¹ This Order addresses issues common to both cases. We therefore exercise our discretion to issue one Order to be filed in each case. The parties are not authorized to use this style heading for any papers filed in the proceedings.

I. BACKGROUND

In the Decision dated September 18, 2024, the Board denied without prejudice Petitioner’s Motion to Seal its Reply (Paper 41) and Exhibits 1059, 1060, 1063, 1080, and 1084. Paper 63² (public version of Final Written Decision), 90–91, 93. The Board granted Petitioner leave to refile its motion and instructed that, if refiled, Petitioner must submit redacted versions of the Reply and exhibits that were subject to the motion. *Id.*

On October 8, 2024, Petitioner filed a Renewed Motion to Seal Exhibits 1059, 1060, 1063, 1080, and Petitioner’s Reply. Paper 64 (“Renewed Mot.”). Petitioner represents that it has conferred with Patent Owner on the Renewed Motion and that Patent Owner does not oppose it. *Id.* at 1. Petitioner further represents that it no longer asks that Exhibit 1084 be sealed. *Id.* at 1 n.1.

II. ANALYSIS

The Board recognizes “a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in an issued patent and therefore affects the rights of the public.” *Garmin Int’l v. Cuozzo Speed Tech., LLC*, IPR2012-00001, Paper 34, 1–2 (PTAB Mar. 14, 2013). Except as otherwise ordered by the Board, the record of an *inter partes* review shall be made available to the public. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. §§ 42.20(c), 42.54(a). In determining whether good cause has been

² For convenience, we reference paper and exhibit numbers as filed in IPR2023-00480, recognizing that analogous papers and exhibits are filed in the related IPR2023-00481 proceeding.

shown, the Board considers, among other things, whether the information sought to be sealed is truly confidential and whether the expressed interest in maintaining confidentiality outweighs the strong public interest in an open record. *Argentum Pharm. LLC v. Alcon Rsch., Ltd.*, IPR2017-01053, Paper 27, 2–3 (PTAB Jan. 19, 2018) (informative).

For the reasons discussed below, we grant Petitioner’s Renewed Motion to Seal.

According to Petitioner, the unredacted versions of Petitioner’s Reply and Exhibits 1059, 1060, 1063, and 1080 (collectively the “Confidential Materials”) include information that Patent Owner has designated as confidential under the Board’s Default Protective Order entered in this case. Renewed Mot. at 2–5. More specifically, Petitioner contends that the Confidential Materials discuss, quote, and/or characterize Patent Owner’s Exhibits 2048, 2049, and 2050, which exhibits were subject to an earlier Motion to Seal that the Board granted. *Id.* at 3–6; Paper 19 (Patent Owner’s Motion to Seal for Entry of Default Protective Order), 4–7; Paper 63, 91, 93 (finding Exhibits 2048, 2049, and 2050 include confidential research and development information and, thus, should be sealed).

Petitioner has now also filed redacted and publicly-available versions of Petitioner’s Reply (Paper 65) along with redacted and publicly-available versions of Exhibits 1059, 1060, 1063, and 1080. Exhibits 1059, 1060, 1063, and 1080 comprise, respectively, the deposition transcripts of Drs. Bodor, Dandiker, Munafo, and Pinal.³

³ Petitioner indicates that it moves to seal Exhibit 1080 (Dr. Pinal’s deposition transcript) only insofar as it quotes a portion of Exhibit 1060 that Patent Owner maintains is confidential. Renewed Mot. at 4.

We have considered the Confidential Materials and compared them against the redacted versions of those materials submitted by Petitioner concurrent with its Renewed Motion. Those redactions are, on balance, minimal. Moreover, we are persuaded that the redacted material comprises confidential research and/or development information, including details quoted from exhibits that are already sealed in this proceeding—Patent Owner has already established a sufficient interest in protecting such information from public disclosure. Conversely, we find that the public’s interest in an open and understandable record is not materially impaired by the minimal redactions at issue here.

For the above reasons, we determine that Petitioner has shown good cause to grant its Renewed Motion. Accordingly, Petitioner’s unredacted Reply (Paper 41) and unredacted versions of Exhibits 1059, 1060, 1063, and 1080 are sealed under the Board’s Default Protective Order.

Because Petitioner no longer requests that Exhibit 1084 (Second Declaration of Dr. Miller) be sealed, the availability designation of Exhibit 1084 will be changed from “Parties and Board” to “Public.”

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner’s Renewed Motion to Seal (Paper 64) is *granted*;

FURTHER ORDERED that Petitioner’s unredacted Reply (Paper 41) and unredacted versions of Exhibits 1059, 1060, 1063, and 1080 are sealed; and

FURTHER ORDERED that Exhibit 1084 is unsealed and will be made available to the public as provided above.

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