

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOM ENTERPRISES, LLC,
Petitioner,

v.

ELAINE AND REINHOLD W. VIETH,
Patent Owners

Case IPR2023-00726
Patent 9,066,958 B2

PETITIONER'S MOTION TO SEAL

PETITIONER'S EXHIBIT LIST

Exhibit	Description
MOM-1001	U.S. Patent No. 9,066,958 (the “’958 patent”)
MOM-1002	U.S. Patent No. 9,066,958 File History
MOM-1003	Complaint, Ddrops Company, Reinhold Vieth, and Elaine Vieth v. MOM Enterprises, LLC, d/b/a Mommy’s Bliss, 1:22-cv-00332-GBW, District of Delaware
MOM-1004	Declaration and Curriculum Vitae of Dr. Robert Williams
MOM-1005	Declaration and Curriculum Vitae of Librarian June Munford
MOM-1006	Section 15.9 of Wochenbettbetreuung in der Klinik und zu Hause, Hippokrates Verlag by Ulrike Harder (2003) (“Harder”)
MOM-1007	Translation of Harder by Amy Tinworth (“Harder Tr.”)
MOM-1008	Aktuelle Therapie: Rachitisprophylaxe beim Säugling by H. Wolf, Volume 95/no.9 Deutsche Medizinische Wochenschrift at 1530 (1970) (“Wolf”)
MOM-1009	Translation of Wolf by Simon Chun Hsieh (“Wolf Tr.”)
MOM-1010	Excerpts from European Pharmacopoeia Supplement 4.3 (2003) (“European Pharmacopoeia Supplement 4.3”)
MOM-1011	Suckling- and Sucrose-Induced Analgesia in Human Newborns by Elliott M. Blass & Lisa B. Watt, 83 Pain 611, (1999) (“Blass”)
MOM-1012	Prevention of Rickets and Vitamin D Deficiency: New Guideline for Vitamin D Intake by Lawrence M. Gartner, Volume 111/no. 4 of Pediatrics at 908 (2003) (“Gartner”)
MOM-1013	Introduction of Oral Vitamin D Supplementation and the Rise of the Allergy Pandemic by Matthias Wjst, Volume 5/no. 8 of Allergy, Asthma & Clinical Immunology (2009) (“Wjst”)
MOM-1014	The Case Against Ergocalciferol (Vitamin D2) as a Vitamin Supplement” by Reinhold Vieth, Volume 84/no.4 of The American Journal of Clinical Nutrition (2006) (“Vieth”)
MOM-1015	Effect of Vitamin D Replacement on Musculoskeletal Parameters in School Children: A Randomized Controlled Trial by Vieth, Volume 91/no. 2 of the Journal of Clinical Endocrinology & Metabolism (2006) (“Vieth II”)

MOM-1016	Public Health Practices in Germany by W. W. Bauer, Volume 40/no. 9 of American Journal of Public Health and The Nation's Health ("Bauer")
MOM-1017	Canadian Patent Application No. 2,558,202
MOM-1018	Stipulation Letter by Petitioner
MOM-1019	Declaration of Sarika Patel
MOM-1020	Declaration of Dr. Casey M. Kraning
MOM-1021	Declaration of Amy Tinworth
MOM-1022	Supplemental Declaration of David Sherman
MOM-1023	Declaration of Dr. Stephen Benyunes
MOM-1024	Supplemental Declaration of Simon Liu
MOM-1025	Supplemental Declaration of June Munford
MOM-1026	MOM 0006559 (AEO-CONFIDENTIAL)
MOM-1027	MOM 0000011 (AEO-CONFIDENTIAL)
MOM-1028	Excerpts from The Complete and Authoritative Guide Caring For Your Baby and Young Child Birth to Age 5, American Academy of Pediatrics, Bantam Books, Eds. Steven P. Shelov and Robert E. Hannemann, Fourth Edition, (2005)
MOM-1029	MeSH Browser, MeSH Descriptor Data, "Postnatal Care" and "Therapeutics"
MOM-1030	Amazon.com_ Ddrops Organic Baby 400 IU 90 Drops - Daily Vitamin D Liquid for Infants
MOM-1031	2021-09-20 Archived Baby Ddrops® - Ddrops US EN
MOM-1032	Amazon.com_ Ddrops Baby Tummy Relief Liquid Drops, Organic Gripe Water for Newborns, Relief from Gas, Colic, Fussiness and Hiccups, Just One Drop, Herbal Ingredients, 120 Drops
MOM-1033	RESERVED
MOM-1034	Target.com_ Mommy's Bliss Baby Organic Vitamin D Drops - 0.11oz (100 Servings)
MOM-1035	Target.com_ Mommy's Bliss Organic Vitamin D Drops Carton Label
MOM-1036	Deposition Transcript of Dr. Paul Horowitz (AEO-CONFIDENTIAL)
MOM-1037	Deposition Transcript of Dr. Steven Reid (AEO-CONFIDENTIAL)
MOM-1038	Deposition Transcript of Chris Temovsky (AEO-CONFIDENTIAL)

MOM-1039	Deposition Transcript of Dr. Reinhold Vieth (AEO-CONFIDENTIAL)
MOM-1040	Declaration of Dr. J. Usha Raj
MOM-1041	Amazon.com Munchkin® Soft Tip™ Infant Spoons, 12 Count (Pack of 1) Baby
MOM-1042	Excerpt from Random House Webster's German-English, English-German Dictionary (1998)
MOM-1043	Excerpt from Collins German Dictionary Third Edition (1998)
MOM-1044	Excerpt from Langenscheidt German-English, English-German Dictionary (2003)
MOM-1045	Google Translate webpage printout
MOM-1046	Microsoft Bing Translate webpage printout
MOM-1047	12/11/2023 Em fr Anderson to Fish re: Ddrops v. MOM - IPR
MOM-1048	A History of Infant Feeding by Emily Stevens et al., Volume 18/no. 2 of The Journal of Perinatal Education (2009)
MOM-1049	Redacted Copy of Exhibit 2026 - Deposition Transcript of Yasmin Kaderali
MOM-1050	Redacted Copy of Exhibit 2027 - Deposition Transcript of Stephanie Medina
MOM-1051	Redacted Copy of Exhibit 2072 - Declaration of Steven M. Reid

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner MOM Enterprises, LLC (“MOM” or “Petitioner”), respectfully moves to seal the following documents containing MOM’s confidential information: Patent Owners’ Motion for Additional Discovery (Paper No. 49); Petitioner’s Opposition to Patent Owners’ Motion for Additional Discovery (Paper No. 50); Patent Owners’ Response (Paper No. 61); Exhibits 2022, 2026, 2027, 2042-2047, 2049-2058, 2060, 2062-2067, and 2072; and corrected Exhibits 2051, 2064, and 2065.

The Board granted entry of the Parties’ Proposed Protective Order on April 3, 2024. Paper 72. Thus, the Protective Order, which appears in the record as Exhibit 2020 governs the handling of confidential information in this proceeding.

In determining whether to grant a Motion to Seal, the Board must find “good cause” 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.” 37 C.F.R. § 42.54(a); 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). “Confidential information means trade secret or other confidential research, development, or commercial information.” 37 C.F.R. § 42.2.

Good cause exists to seal the above identified Papers and Exhibits. *See, e.g., Telebrands Corp. v. Tinnus Enterprises, LLC*, No. PGR2015-00018, Decision on Motion to Seal (Paper 41) at 2 (Good cause to seal is warranted when documents “contain ‘sensitive business information’ or discuss other exhibits that contain

sensitive information.”); *see also Wright Medical Technology, Inc. v. Biomedical Enterprises, Inc.*, IPR2015-00786, Decision on Motion to Seal (Paper 37) at 2 (The Board granted motion to seal on documents containing “descriptions of Patent Owner’s manufacturing details” and “deposition transcripts of...employees that discuss business strategies, corporate management details, or product designs, testing, or manufacturing details that [one party] has deemed to be confidential.”). Furthermore, public disclosure of the identified Papers and Exhibits has the potential to significantly harm MOM’s competitive positions because it would allow competitors to access highly sensitive business information regarding research & development, manufacturing processes, and process information, as explained in more detail below with respect to the specific Exhibits and Papers.

MOM notes that Exhibits 2042-2047, 2049-2058, 2060, 2062, 2063, and 2067, as well as Corrected Exhibit 2051, referenced below were produced by the Parties in a related district court litigation (*Ddrops Company, Reinhold Vieth, and Elaine Vieth v. MOM Enterprises, LLC d/b/a Mommy’s Bliss*, D. Del., Case No. 1:22-cv-00332-GBW) and are designated as Confidential-Attorneys’ Eyes Only in their entirety under the protective order in the related district court case. Under similar circumstances in which a parallel district court case exists, the Board has found good cause to seal “documents that are subject to a protective order in related district court litigation.” PGR2015-00018, (Paper 41) at 2; *see also Weber, Inc. v.*

Provisur Technologies, Inc., No. IPR2020-01556, Decision on Motion to Seal and Enter Protective Order (Paper 12) at 3.

MOM's positions with respect to the specific harm associated with the public disclosure of Exhibits 2022, 2026, 2027, 2042-2047, 2049-2058, 2060, 2062-2067, and 2072; and corrected Exhibits 2051, 2064, and 2065 are set forth below:

- **Exhibit 2022:** This document is the Rule 30(b)(6) deposition transcript of Innovative Labs, taken on September 6, 2023, and accompanying exhibits 1-23. Innovative Labs is a vendor for MOM. The document includes substantial amounts of testimony and exhibits regarding (1) the terms of confidential contracts between MOM and Innovative Labs; and (2) details of the relationship between MOM and its manufacturers and suppliers, including documents and emails regarding strategy, MOM's customers, technical information, and pricing. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. In addition, to the extent Exhibit 2022 contains confidential information that only the third-party would seek to protect, MOM is under contractual and legal obligation to not publicly disclose the information in Exhibit 2022. First, the agreement between Innovative Labs and MOM includes a

confidentiality clause that states “Neither party shall disclose the terms of this agreement without written consent of the other party.” EX2022 at 169. Additionally, the transcript and exhibits were designated by the third party in a related district court litigation (*Ddrops Company, Reinhold Vieth, and Elaine Vieth v. MOM Enterprises, LLC d/b/a Mommy’s Bliss*, D. Del., Case No. 1:22-cv-00332-GBW) and as Confidential-Attorneys’ Eyes Only in their entirety (*see, e.g.* EX2022 at 42) under the protective order in the related district court case. Under similar circumstances in which a parallel district court case exists, the Board has found good cause to seal “documents that are subject to a protective order in related district court litigation.” PGR2015-00018, (Paper 41) at 2; *see also Weber, Inc. v. Provisur Technologies, Inc.*, No. IPR2020-01556, Decision on Motion to Seal and Enter Protective Order (Paper 12) at 3. Additionally, Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.

- **Exhibit 2026:** This document is the deposition transcript of Yasmin Kaderali, taken on January 30, 2024. Ms. Kaderali is MOM’s CEO, and her testimony regarding: (1) ownership structure of MOM (e.g., pp. 18-

19); (2) internal emails and documents regarding competitor analyses and identification, customer analyses and identification, market share analyses, and technical product development (e.g., pp. 27, 29-32, 34-35, 43-46, 62, 72-73, 75-76, 80-81, 83, 96-98, 100-101, 106-107, 113-114-118, 121, 123-130, 143); (3) details concerning MOM's manufacturers and suppliers (e.g., pp. 38-39, 68, 94, 140-142, 148). MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed. A redacted copy of Exhibit 2026 is being filed concurrently with this motion to seal, with redactions limited to the minimum amount necessary to protect MOM's confidential information (Exhibit 1049).

- **Exhibit 2027:** This document is the deposition transcript of Stephanie Medina, taken on February 1, 2024. Ms. Medina is MOM's Senior Director of Research & Development, and her testimony regarding internal emails, documents, and strategy regarding (1) competitor analyses and identification, customer analyses and identification, and

technical product development (e.g., pp. 31-32, 35-36, 38-39, 66-73, 90-91, 94, 100); and (2) identities and details concerning MOM's manufacturers and vendors (e.g., pp. 41-43, 59-60, 75-77, 92-93). MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed. A redacted copy of Exhibit 2027 is being filed concurrently with this motion to seal, with redactions limited to the minimum amount necessary to protect MOM's confidential information (Exhibit 1050).

- **Exhibit 2042:** This document is an internal MOM document that shows the draft art that was being proposed for MOM's probiotic product. MOM does not make its art for packaging its upcoming products available to the public in order to prevent MOM's competitors from unfairly competing against MOM. MOM filed this document as Exhibit 1026 with a motion to seal (Paper No. 76), and relies on this document to support its arguments pertaining to obviousness and in response to patent owners' arguments pertaining to secondary considerations.

- **Exhibit 2043:** This document is an internal MOM email dated February 12, 2010 that describes the market analysis of MOM's competitors performed before MOM decided to enter the market. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.
- **Exhibit 2044:** This document is an internal MOM email dated March 1, 2010 that describes the pricing of and Vitamin D source used by a potential manufacturer. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.
- **Exhibit 2045:** This document is an internal MOM presentation regarding a "New Item Presentation" disclosing MOM's category strategy, new product expectations, sales projection, and promotional

and marketing plans for distribution through a specific retailer. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.

- **Exhibit 2046:** This document is an internal MOM presentation dated 2017 regarding new product development and including research regarding pricing, sizing, competitors, market standing, and distribution targets. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.
- **Exhibit 2047:** This document is an internal MOM presentation titled "Category Update 2018" directed to a potential retailer that includes detailed market analysis, MOM's marketing plans, and projected potential revenue. MOM does not make these details available to the

public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.

- **Exhibit 2049:** This document is an internal MOM email chain dated between May 29, 2020 and June 5, 2020 that describes strategy regarding the formulation, packaging, and potential modification of MOM's commercial product, including specific quality and testing information. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.
- **Exhibit 2050:** This document is an internal MOM email chain dated between August 17, 2020 and October 7, 2020 that describes strategy regarding the formulation, packaging, and potential modification of MOM's commercial product, including specific quality and testing information. MOM does not make these details available to the public

because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.

- **Exhibit 2051 (and Corrected Exhibit 2051):** This document is an internal MOM email dated January 30, 2021 with attachment titled "Quarterly Business Review 29 Jan 2021.pptx." This email and attached document contains information regarding MOM's financial performance information, sales volume by specific retailer, formulation strategy, and marketing performance and strategy. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed. Per the Board's footnote on page 2 of its Order, Petitioner notes that Patent Owner has not yet complied with the Order. Nevertheless, Paper No. 64 (containing Corrected Exhibit 2051) needs to remain sealed if it is not expunged.

- **Exhibit 2052:** This document is an internal MOM document dated April 22, 2021 titled “Existing Product, Coupon and Sidekick Artwork Approval Form” that shows the draft art that was being proposed for MOM’s vitamin D product. MOM does not make its art for packaging its upcoming products available to the public in order to prevent MOM’s competitors from unfairly competing against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.
- **Exhibit 2053:** This document is an internal MOM presentation titled “Quarterly Business Review Q1 2021” and dated April 28, 2021. This presentation contains information regarding MOM’s financial performance information, sales volume by specific retailer, formulation strategy, and marketing performance and strategy. MOM does not make these details available to the public because they would allow MOM’s competitors to understand MOM’s internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.

- **Exhibit 2054:** This document is an internal MOM presentation containing detailed sales information for MOM and MOM's competitors, as well as market performance and trends. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.
- **Exhibit 2055:** This document is an internal MOM presentation titled "Q1 2022 Business Review" and dated May 6, 2022. This presentation contains information regarding MOM's financial performance information, sales volume by specific retailer, formulation strategy, and marketing performance and strategy. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.

- **Exhibit 2056:** This document is an internal MOM presentation titled “Q3 2021 Business Review” and dated November 19, 2021. This presentation contains information regarding MOM’s financial performance information, sales volume by specific retailer, formulation strategy, and marketing performance and strategy. MOM does not make these details available to the public because they would allow MOM’s competitors to understand MOM’s internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.
- **Exhibit 2057:** This document is an internal MOM presentation titled “2021 FY Business Review” and dated February 10, 2022. This presentation contains information regarding MOM’s financial performance information, sales volume by specific retailer, formulation strategy, and marketing performance and strategy. MOM does not make these details available to the public because they would allow MOM’s competitors to understand MOM’s internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that

they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.

- **Exhibit 2058:** This document is an internal MOM presentation titled “Q2 2022 Business Review” and dated August 10, 2022. This presentation contains information regarding MOM’s financial performance information, sales volume by specific retailer, formulation strategy, and marketing performance and strategy. MOM does not make these details available to the public because they would allow MOM’s competitors to understand MOM’s internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.
- **Exhibit 2060:** This document is an internal MOM document that shows the draft art that was being proposed for MOM’s Vitamin D product. MOM does not make its art for packaging its upcoming products available to the public in order to prevent MOM’s competitors from unfairly competing against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there

exists a genuine need to rely in the trial on the specific information sought to be sealed.

- **Exhibit 2062:** This document is an internal MOM document that shows the draft marketing material that was being proposed for MOM's Vitamin D product. MOM does not make its draft marketing material for its products available to the public in order to prevent MOM's competitors from unfairly competing against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.
- **Exhibit 2063:** This document is an internal MOM presentation titled "Vitamin D: Market Share Review 2020-2022." This presentation contains information regarding MOM's financial performance information, sales volume by specific retailer, formulation strategy, and marketing performance and strategy. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a

genuine need to rely in the trial on the specific information sought to be sealed.

- **Exhibit 2064 (and Corrected Exhibit 2064):** This document is an internal MOM spreadsheet containing information regarding the sales and volume information for MOM's products broken down by retailer. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed. Per the Board's footnote on page 2 of its Order, Petitioner notes that Patent Owner has not yet complied with the Order. Nevertheless, Paper No. 64 (containing Corrected Exhibit 2064) needs to remain sealed if it is not expunged.
- **Exhibit 2065 (and Corrected Exhibit 2065):** This document is an internal MOM spreadsheet containing information regarding the sales and volume information for MOM's products broken down by quarter. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal

strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed. Per the Board's footnote on page 2 of its Order, Petitioner notes that Patent Owner has not yet complied with the Order. Nevertheless, Paper No. 64 (containing Corrected Exhibit 2065) needs to remain sealed if it is not expunged.

- **Exhibit 2066:** This document is the technical specification for Mommy Bliss's Baby Vitamin D Organic Drops, which is dated October 7, 2021. This document lists details about the ingredients, formula, shelf life, quality control standards, microbiological standards, processing instructions, manufacturing instructions, packaging, and batch information for MOM's current baby vitamin D product. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. MOM filed this document as Exhibit 1027 with a motion to seal (Paper No. 76), and relies on this document to support its arguments pertaining to

obviousness and in response to Patent Owners' arguments pertaining to secondary considerations.

- **Exhibit 2067:** This document is an internal MOM email chain dated between November 10, 2020 and November 11, 2020 that describes strategy regarding the marketing of MOM's commercial product, including competitive intelligence. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed.
- **Exhibit 2072:** This document is Patent Owners' Declaration of Steven M. Reid, signed on February 9, 2024. Paragraphs 103, 107, 109, and 110 disclose MOM's confidential information relating to the formulation of its vitamin D commercial product, testimony from MOM's declarants regarding internal MOM documents and emails about the development and potential modification of MOM's commercial products. MOM does not make these details available to the public because they would allow MOM's competitors to understand

MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners introduced and rely upon this document in their briefing, indicating that they believe there exists a genuine need to rely in the trial on the specific information sought to be sealed. A redacted copy of Exhibit 2072 is being filed concurrently with this motion to seal, with redactions limited to the minimum amount necessary to protect MOM's confidential information (Exhibit 1051). These redactions include the redactions to Patent Owners' confidential information filed in Exhibit 2080.

Thus, Petitioner has shown that “(1) the information sought to be sealed is truly confidential, (2) a 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, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.” Paper No. 73, 5 (quoting *Argentum Pharms. LLC*, IPR2017-01053, Paper 27, at 3-4). Therefore, Petitioner has designated the Confidential Materials as “Confidential-Attorneys' Eyes Only” under the Protective Order.

In addition to the Exhibits addressed above, Petitioner also moves to seal three Papers. First, in Patent Owners' Motion for Additional Discovery (Paper No. 49), Patent Owners disclose confidential MOM information relating to the formulation

development, marketing strategy, and sales and volume information relating to MOM's commercial product. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Patent Owners previously filed a redacted copy of its motion that Petitioner had approved. *See* Paper No. 48. Per the Board's order, however, Petitioner is concurrently filing a separate redacted version of this document (Paper No. 86). Petitioner's redactions are limited to the minimum amount necessary to protect MOM's confidential information.

Second, Petitioner renews its motion to seal Petitioner's Opposition to Patent Owners' Motion for Additional Discovery (Paper No. 50). Petitioner's Opposition includes several quotes from the confidential documents addressed in detail above that disclose confidential MOM information relating to the formulation development and marketing strategy relating to MOM's commercial product. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Contrary to the Board's understanding, (Paper No. 73, 6), MOM did previously file a redacted copy of Petitioner's Opposition concurrently with its Motion to Seal, as Paper No. 51. Thus, Petitioner has not filed this document a second time. Petitioner affirms that its redactions are limited to the minimum amount necessary to protect MOM's confidential information.

Finally, Petitioner moves to seal Patent Owners' Response (Paper No. 61). Patent Owners' Response discloses confidential MOM information relating to the formulation development, marketing strategy, and sales and volume information relating to MOM's commercial product, including through reference to the above described Exhibits. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. Petitioner is concurrently filing a separate redacted version of this document (Paper No. 87). Petitioner's redactions are limited to the minimum amount necessary to protect MOM's confidential information. To avoid confusion in the record, Petitioner has conferred with Patent Owners and provides a copy of the Patent Owners' Response that includes both parties' redactions. Petitioner's redactions are on pages 3, 48, 50-52, and 63 (with the exception of the sentence in the second paragraph that starts "At the fourth quarter of 2020," which is Patent Owners' redaction).¹ Petitioner affirms that its

¹ Patent Owners filed Paper No. 84 today, a redacted copy of its Patent Owners Response. Because Paper No. 84 includes redactions to Petitioner's non-confidential information, Petitioner has filed its own separate copy containing only the minimum amount of redactions necessary to protect Petitioner's confidential information.

redactions are limited to the minimum amount necessary to protect MOM's confidential information.

Undersigned counsels, on behalf of Petitioner, certify that the information sought to be sealed has not, to their knowledge, been published or otherwise made public.

Date: May 3, 2024

/Casey Kraning/

David Conrad, Reg. No. 60,788

Lance Wyatt, Reg. No. 68,837

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§42.6(e), the undersigned certifies that on May 3, 2024, a complete and entire copy of Petitioner's Motion to Seal was provided via email to the Patent Owners by serving the correspondence email address of record as follows:

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