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 RESPONSE TO PATENT OWNERS' MOTION TO SEAL SUR-REPLY

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 Saugling 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
MOM-1052	Petitioner's Demonstratives

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner MOM Enterprises, LLC ("MOM" or "Petitioner"), respectfully responds to Patent Owners' Motion to Seal Sur-reply (Paper No. 93) and requests to seal a small portion of the Sur-reply (Paper No. 91) containing MOM's confidential information.

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 Paper. *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 MOM's confidential information in Patent Owners' Sur-reply has the potential to significantly harm MOM's competitive positions because it would allow competitors to access highly sensitive business information regarding MOM's market share as explained in more detail below.

Petitioner moves to seal Patent Owners' Sur-reply (Paper No. 91), specifically, a portion of one sentence on page 23. In that sentence, Patent Owners disclose confidential MOM information relating to 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. 105). Petitioner affirms that its redactions are limited to the minimum amount necessary to protect MOM's confidential information. Paper No. 105 also includes Patent Owners' redactions to their 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: June 24, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§42.6(e), the undersigned certifies that on June 24, 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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