

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIONTECH SE AND PFIZER INC.,
Petitioners,

v.

MODERNA TX, INC.,
Patent Owner.

Case IPR2023-01359
Patent No. 10,933,127

MOTION TO SEAL

Patent Owner Moderna TX, Inc. (“Moderna”) respectfully submits this Motion to Seal.

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, and for the reasons below, Moderna respectfully requests that the Board seal in part Exhibit 2256 (Pierce Deposition Transcript) and Patent Owner’s Sur-Reply.

II. GOOD CAUSE EXISTS FOR SEALING THE IDENTIFIED CONFIDENTIAL INFORMATION

Although documents filed with the Board are generally publicly available, the Board may protect confidential information from public disclosure based on a showing of good cause. *See* 37 C.F.R §§ 42.14, 42.412 42.54; *Garmin Int’l, Inc. et al. Petitioner v. Cuozzo Speed Techs. LLC Pat. Owner*, No. IPR2012-00001 (JL), 2013 WL 8149381 (P.T.A.B. Apr. 5, 2013) at 2-3. Pursuant to the Consolidated Trial Practice Guide, confidential information in IPR proceedings is identified “in a manner consistent with Federal Rule of Civil Procedure (‘FRCP’) 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” Consolidated Trial Practice Guide at 19 (Nov. 2019). In particular, the Board will protect confidential information after balancing “the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” *Id.* at 19.

Exhibit 2256 (Pierce Deposition Transcript) contains excerpts and detailed discussions of Exhibits 2050-2052 (Moderna Investigator's Brochures) and 2056 (Moderna Type B Pre-IND Meeting Request), which the Board has already sealed, subject to further order from the Board, pursuant to the Modified Protective Order set out in Exhibit 2059. Paper 20 at 93. Moderna designates Exhibit 2256 as containing "PROTECTIVE ORDER MATERIAL" content under the stipulated Protective Order in this proceeding (Ex. 2059) to the extent it quotes from or describes in detail the content of exhibits that have been previously sealed. For the same reasons that Exhibits 2050-2052, and 2056 were sealed, the content contained within Exhibit 2256 reflects confidential information relating to research and development, commercial information, as well as technical analyses, which were included in regulatory submissions. Moderna requests that the Board seal Exhibit 2256. Moderna will file a corresponding public redacted version (Exhibit 2257) that redacts the sealed information contained in Exhibits 2050-2052 and 2056.

Patent Owner's Sur-Reply contains excerpts and detailed discussions of Exhibits 2146 and 2147 (further excerpts from Moderna Investigator's Brochures), which Moderna previously moved to seal. Paper 41 at 2. Exhibits 2146 and 2147 contain (1) the same pages as Exhibits 2051 and 2052, which are excerpts from longer documents, and (2) additional pages from the same longer documents. The Board has already sealed Exhibits 2051 and 2052, which are excerpts from the same

highly confidential documents as Exhibits 2146 and 2147, subject to further order from the Board, under the Modified Protective Order set out in Exhibit 2059. Paper 20 at 93. Moderna designates Patent Owner's Sur-Reply as containing "PROTECTIVE ORDER MATERIAL" content under the stipulated Protective Order in this proceeding (Ex. 2059) to the extent it quotes from or describes in detail the contents of exhibits the Board has previously sealed or Moderna has separately sought to seal. For the same reasons discussed in Moderna's previous motions to seal (Papers 12 and 41), this content contained within Patent Owner's Sur-Reply reflects confidential information relating to research and development, commercial information, as well as technical analyses, which were included in regulatory submissions. Moderna requests that the Board seal Patent Owner's Sur-Reply. Moderna will file a corresponding public redacted version that redacts the confidential information Moderna has sought to seal in Exhibits 2146 and 2147.

Moderna's interests in protecting its confidential business information, including regulatory submissions containing and reflecting non-public, commercially sensitive, and proprietary research and development data and characteristics of its product and product candidates, outweighs the public's interest in viewing that information. *Garmin Int'l, Inc. et al. Petitioner v. Cuozzo Speed Techs. LLC Pat. Owner* at 3-4 (the public's interest in having access to a party's confidential business information, not related to patent validity, is "minimal").

Therefore, there is good cause to seal each of Exhibit 2256 (Pierce Deposition Transcript) and Patent Owner's Sur-Reply.

III. CONCLUSION

For the reasons set forth above, Patent Owner Moderna respectfully requests the Board grant its Motion to Seal.

Respectfully submitted,

Date: October 16, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2024, I caused a true and correct copy of the following documents:

- Motion to Seal
- Exhibit 2256
- Patent Owner's Sur-Reply

to be served via e-mail, as consented to by Petitioner, upon the following:

COVIDPatentPfizer@wc.com
BioNTech-Moderna-IPR@paulhastings.com

By: /Wenli Gu/
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