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 Patent Owner's Oral Argument Demonstratives.

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.

Slide 90 of Patent Owner's Oral Argument Demonstratives contains excerpts of Exhibit 2050 (Moderna Investigator's Brochure), 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. Exhibit 2146 contains (1) the same pages as Exhibit 2050, which are excerpts from a longer document, and (2) additional pages from the same longer document. Slide 90 of Patent Owner's Oral Argument Demonstratives therefore also contains excerpts of Exhibit 2146, which Moderna previously moved to seal. Paper 41 at 2.

Moderna designates Patent Owner's Oral Argument Demonstratives as containing "PROTECTIVE ORDER MATERIAL" content under the stipulated Protective Order in this proceeding (Ex. 2059) to the extent they quote from or describe in detail the content of exhibits that have been the subject of previous motions to seal. Paper 12 at 2; Paper 41 at 2. For the same reasons that Moderna moved for Exhibits 2050 and 2146 to be sealed, the content contained within Patent Owner's Oral Argument Demonstratives 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 Oral Argument Demonstratives. Moderna will file a corresponding public redacted version that redacts only the confidential information contained in Exhibits 2050 and 2146, which is limited to a single slide.

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 Patent Owner's Oral Argument Demonstratives in part.

III. CONCLUSION

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

Respectfully submitted,

Date: December 3, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2024, I caused a true and correct copy of the following documents:

- Motion to Seal
- Patent Owner's Oral Argument Demonstratives

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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