UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERCK SHARP & DOHME LLC,
Petitioner

v.

THE JOHNS HOPKINS UNIVERSITY,
Patent Owner

Case IPR2024-00647
Patent 11,649,287

PATENT OWNER'S MOTION TO SEAL SUR-REPLY AND ACCOMPANYING EXHIBITS

Pursuant to 37 C.F.R. § 42.54 and the Board's Scheduling Order (Paper 12), Patent Owner Johns Hopkins University ("JHU") submits this Motion to Seal concurrent with its Patent Owner Sur-Reply ("Sur-Reply") and Exhibits 2404 and 2411, submitted concurrently with this Motion. Good cause exists for granting this Motion because the Sur-Reply and Exhibits 2404 and 2411 contain information that either Patent Owner JHU and/or Petitioner Merck Sharp & Dohme LLC ("Merck") has designated as highly confidential. Merck has informed JHU that it does not oppose this Motion to Seal.

The Parties have agreed to, and previously filed, a proposed modified protective order. *See* Paper 26 at 7-10, Appx A. The Parties respectfully request entry of the modified protective order for the reasons previously explained. *Id*.

I. GOOD CAUSE EXISTS FOR SEALING JHU'S AND MERCK'S HIGHLY CONFIDENTIAL INFORMATION

In an *inter partes* review ("IPR"), the party moving to seal information must demonstrate "good cause." 37 C.F.R. § 42.20(c). The Board has explained that "a movant to seal must demonstrate adequately 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."

Argentum Pharmaceuticals LLC v. Alcon Research, Ltd., IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative).

A. Documents Requested to be Sealed

JHU respectfully moves to seal the following documents:

- **Exhibit 2404 –** This document is a deposition transcript from the deposition of Merck's declarant Paul E. Oberstein, M.D., which includes discussion of documents that JHU marked as Highly Confidential during Dr. Oberstein's deposition, one of which is Exhibit 2410.[1] Exhibit 2410 is a five page amendment to an agreement between the Parties. The entirety of Exhibit 2410 is directed to Highly Confidential Information.

- **Exhibit 2411** – This document is a deposition transcript from the deposition of Merck's declarant Sean D. Sheridan, Ph.D., which includes discussion of Dr. Sheridan's opinions that rely on Merck's and third-party IQVIA's Highly Confidential Information contained in Exhibits 2187 and 2188 discussed in JHU's January 23, 2025 Motion to Seal (Paper 26) and Merck's May 6, 2025 Motion to Seal (Paper 42).

- **Patent Owner's Sur-Reply** – JHU's Sur-Reply contains arguments that reference and cite to Highly Confidential Information contained in various

[1] JHU is not submitting Exhibit 2410 as part of this IPR.

exhibits of record, including Exhibits 2167-2174, 2181-2182, 2187-2188, 2191, 2404, and 2411.

Based on the Board's instruction in IPR2024-00240, the Parties will file public versions of relevant documents with redactions within ten business days of the filing of this Motion.

B. *Argentum* Factors

Regarding *Argentum* factors (1), (2), and (4), Merck provided the following explanation in support of this motion to seal:[2]

> "Dr. Oberstein's Deposition Transcript: This document is a deposition transcript from the deposition of Merck declarant, Dr. Paul Oberstein, which includes the discussion of non-public agreements between Merck and JHU, which JHU indicated should be designated as highly confidential under the protective order during Dr. Oberstein's deposition. The information reflects highly confidential sensitive business information. As such, good cause exists for sealing portions of Dr. Oberstein's deposition transcript."

[2] JHU notes that it has offered Merck's explanation only for the purpose of complying with the requirement for filing a motion to seal. JHU does not concede agreement with the assertions in Merck's explanations.

> "Dr. Sheridan's Deposition Transcript: This document is a deposition transcript from the deposition of Merck declarant, Dr. Sean Sheridan, which includes the discussion of Merck's highly confidential sensitive financial information and highly confidential third-party IQVIA data. As such, good cause exists for sealing portions of Dr. Sheridan's deposition transcript.

Regarding *Argentum* factor (3)[3], JHU has a genuine need to rely in this trial on the information sought to be sealed. JHU relies on this information in the Sur-Reply, for example, to contest the obviousness grounds advanced in Merck's petition, and to demonstrate objective indicia of non-obviousness. As the Board recognized in its Order authorizing additional discovery, "Merck chose to include challenges based on obviousness in its Petition and JHU is entitled to present its own, full opposition to all of these challenges." IPR2024-00240, Paper 32, 5.

For each of these reasons, the *Argentum* factors support this motion to seal the above-identified documents.

[3] While Merck does not oppose this motion, Merck indicates that it disagrees with JHU's arguments with respect to *Argentum* factor (3).

II. CONCLUSION

JHU respectfully requests that the Board seal and protect Exhibits 2404 2411, and a confidential version of the Patent Owner's Sur-Reply.

Respectfully submitted,

Dated: June 3, 2025

/Nicholas W. Stephens/
Nicholas Stephens, Reg. No. 74,320
Fish & Richardson P.C.
60 South Sixth Street, Suite 3200
Minneapolis, MN 55402

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4), the undersigned certifies that on June 3, 2025, a complete and entire copy of this Motion to Seal Sur-Reply and Accompanying Exhibits was provided by email to the Petitioner by serving the correspondence address of record as follows:

Naveen Modi (Reg. No. 46,224)
Bruce M. Wexler (Reg. No. 35,409)
Preston K. Ratliff II (Reg. No. 43,034)
Daniel Zeilberger (Reg. No. 65,349)
Dana R. Weir (Reg. No. 55,865)
Jessica Stauring (*pro hac vice*)
Mark Stewart (Reg. No. 43,936)
Paul Hastings LLP
PH-MSD-JHU-IPR@paulhastings.com
mark.stewart@merck.com

/Crena Pacheco/
Crena Pacheco
Fish & Richardson P.C.
60 South Sixth Street, Suite 3200
Minneapolis, MN 55402
pacheco@fr.com