UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALAMAR BIOSCIENCES, INC.,
Petitioner

v.

OLINK PROTEOMICS AB,
Patent Owner

Case IPR2024-01353
U.S. Patent No. 7,883,848

PATENT OWNER'S RESPONSE TO PETITIONER'S MOTION TO SEAL EXHIBIT 1048

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I. INTRODUCTION

Pursuant to 37 C.F.R. 42.25(a), Patent Owner submits this response to Petitioner's Motion to Seal Exhibit 1048 (Paper 25). This response is timely filed within one month from the date of service of Petitioner's Motion to Seal Exhibit 1048. 37 C.F.R. § 42.25(a)(1). Good cause exists to seal Exhibit 1048 because it includes third parties' business information that is subject to contractual obligations of confidentiality. Petitioner does not oppose Patent Owner's request to seal Exhibit 1048. Paper 25 at 2–3.

II. GOVERNING RULES AND PTAB GUIDANCE

"A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion." 37 C.F.R. § 42.14. The Consolidated Trial Practice Guide ("CTPG") explains that "[t]he rules aim to 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." CTPG at 19. As the CTPG states, "[t]he rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information." *Id.* (citing 37

C.F.R. § 42.54).

In determining whether to grant a Motion to Seal, the Board must find "good cause." 37 C.F.R. § 42.54(a). Good cause for sealing material can be established by demonstrating that the balance of the following considerations favors sealing the material: whether "(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 Pharms. LLC v. Alcon Rsch., Ltd.*, IPR2017-01053, Paper 27 at 4 (P.T.A.B. Jan. 19, 2018) (informative).

III. GOOD CAUSE EXISTS FOR SEALING EXHIBIT 1048

Exhibit 1048 is the deposition transcript of Patent Owner's expert witness, Dr. Bradley L. Pentelute. Exhibit 1048 contains confidential business information pertaining to (i) an employment contract between Dr. Pentelute and the Massachusetts Institute of Technology ("MIT"), a third-party private research university, and (ii) a nondisclosure agreement between Dr. Pentelute's company, Amide Technologies, a third-party, and Thermo Fisher Scientific Inc. ("Thermo Fisher"), a real-party in interest in the present proceeding.

Good cause exists to seal Exhibit 1048 because Exhibit 1048 discloses the third parties' business information that is subject to contractual obligations of

confidentiality. During deposition, Dr. Pentelute was asked specific questions regarding his salary at MIT and about Amide Technologies' professional interactions with Thermo Fisher. Exhibit 1048 at 23:3-24:2, 32:15-33:4. However, information regarding Dr. Pentelute's salary at MIT (a private research university) is subject to the confidentiality of his employment contract with MIT. Additionally, Amide Technologies' professional interactions with Thermo Fisher (which were unrelated to the present proceeding) are subject to the confidentiality provisions of a nondisclosure agreement between Amide Technologies and Thermo Fisher. Thus, a legal obligation to protect the third parties' confidential business information from the public exists and the third parties have not provided consent for this confidential business information to be released. Accordingly, counsel for Patent Owner timely designated portions of Exhibit 1048 as confidential, and Petitioner filed Exhibit 1048 under seal. Paper 25 at 2–3; Exhibit 1049 (public, redacted version of Exhibit 1048). To the best of the Undersigned's knowledge, the confidential business information in Exhibit 1048 has not been published or otherwise made public.

Exhibit 1048 contains confidential information directed to third parties' business structure and operations constituting "confidential research, development, or commercial information" consistent with Federal Rule of Civil Procedure 26(c)(1)(G) and 37 C.F.R. 42.54(a)(7). The Board consistently seals documents

containing confidential information of third parties. *See e.g., Google LLC v. Valtrus Innovations Ltd.*, IPR2022-01497, Paper 77 at 59 (P.T.A.B. Aug. 13, 2024) ("We are mindful that the non-public information … is that of a third party … After balancing the public's interest in a complete and understandable file history with the third-party's interest in protecting this information, we are persuaded that there is good cause to seal the information…."); *ecobee Techs. ULC v. Causum Enters., Inc.*, IPR2022-01339, Paper 22 at 3–5 (P.T.A.B. Apr. 10, 2023) (granting a Motion to Seal a document containing "confidential information of a third party."); *Activision Blizzard, Inc. v. Acceleration Bay, LLC*, IPR2016-00724, Paper 52 at 2–3 (P.T.A.B. Sep. 15, 2017) (granting a Motion to Seal "confidential information regarding research and development efforts and licensing practices of a third party."). Furthermore, the Board has sealed documents containing third parties' business information that is subject to contractual obligations of confidentiality. *See e.g., Regeneron Pharms., Inc. v. Novartis Pharma AG*, IPR2021-00816, Paper 103 at 5–6, 9 (P.T.A.B. Jul. 8, 2022) (granting a Motion to Seal confidential commercial information in third-party contracts); *One World Techs., Inc. v. Chervon (HK) Ltd.*, IPR2020-00886, Paper 55 at 65 (P.T.A.B. Nov. 3, 2021) (granting a Motion to Seal testimony regarding confidential information in third party contracts). Accordingly, Exhibit 1048 should be subject to the protection of the Board's Default Protective Order.

The third parties, MIT and Amide Technologies, would suffer concrete harm from the public disclosure of Exhibit 1048. The confidential business information therein could provide competitor insight into the third parties' business practices, structures, prospects, and financials.

There exists no genuine need to rely in the trial on the third parties' confidential business information sought to be sealed. The confidential business information in Exhibit 1048 relates only to Dr. Pentelute's personal finances and Amide Technologies' professional interactions with Thermo Fisher. This information is unrelated to the validity of the challenged patent and does not impede the public's understanding of the file history of this proceeding. Nor has Petitioner relied upon the third-party confidential information in its Petitioner's Reply. *See generally,* Paper 24. Thus, the public interest in making the third parties' confidential business information public is minimal, if any. *See Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 36 at 8–9 (P.T.A.B. Apr. 5, 2013) (finding that the public's interest in having access to confidential business information, not related to patent validity, is "minimal").

On balance, the interest in maintaining confidentiality outweighs the public interest in having an open record. The public disclosure of the confidential business information in the third parties' contractual agreements would harm the third parties because the third parties' competitors would gain insight into the third

parties' business models and approaches, thus putting these third parties at a competitive disadvantage relative to other companies similarly positioned in the same industry. In contrast, sealing of Exhibit 1048 deprives the public of only the confidential information related to one individual's salary and to a third party's professional interactions with Thermo Fisher unrelated to this IPR. Furthermore, the public's interest in an open record is served as general facts about Dr. Pentelute's employment at MIT and Dr. Pentelute's company, Amide Technologies, are provided in the papers and exhibits, including the public, redacted version of Exhibit 1048 filed as Exhibit 1049.

Accordingly, Patent Owner respectfully requests that the Board grant Petitioner's Motion to Seal Exhibit 1048 (Paper 25).

IV. A REDACTED VERSION OF EXHIBIT 1048 IS PROVIDED

In an effort to balance "the public's interest in maintaining a complete and understandable file history[,]" Petitioner filed a public version of Exhibit 1048 (*see* Exhibit 1049) with redactions of the confidential information. CTPG at 19.

V. DEFAULT PROTECTIVE ORDER

Patent Owner submits that the confidential information referenced herein be subject to the Board's Default Protective Order, previously submitted as Exhibit 1050 with Petitioner's Motion to Seal Exhibit 1048. *See* Paper 25 at 2; Exhibit 1050; 37 C.F.R. § 42.54(a).

VI. CERTIFICATION OF NONPUBLICATION

Undersigned counsel certifies that the information sought to be sealed has not, to their knowledge, been published or otherwise made public.

VII. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that the Board enter Default Protective Order and grant Petitioner's Motion to Seal Exhibit 1048. Paper 25.

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PATENT OWNER'S RESPONSE TO PETITIONER'S MOTION TO SEAL EXHIBIT 1048** was served in its entirety on October 22, 2025, upon the following parties via electronic mail:

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