Filed on behalf of: Agios Pharmaceuticals, Inc.

Entered: July 27, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APOTEX INC.,
Petitioner,

v.

AGIOS PHARMACEUTICALS, INC.,
Patent Owner.

IPR2026-00351
Patent No. 11,878,049

PATENT OWNER AGIOS PHARMACEUTICALS, INC.'S MOTION TO FILE DOCUMENTS UNDER SEAL AND FOR A PROTECTIVE ORDER

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Agios Pharmaceuticals, Inc. ("Agios" or "Patent Owner") respectfully requests the Board authorize the filing under seal of the Patent Owner's Brief on Discretionary Denial and accompanying Exhibit 2008. In addition, Agios respectfully requests the Board enter the Proposed Protective Order, a copy of which is filed concurrently herewith as Exhibit 2010. The Proposed Protective Order copies the Board's Default Protective Order.

The Patent Owner's Brief on Discretionary Denial and Exhibit 2008 contain Agios's confidential information that Agios designates as PROTECTIVE ORDER MATERIAL under the Proposed Protective Order. *See* Ex. 2010 (Proposed Protective Order). The Patent Owner's Brief on Discretionary Denial and Exhibit 2008 that Agios seeks to seal include confidential financial information, including financial data concerning research, development, and marketing. This information relates to the core of Agios's business. Public disclosure of this information would significantly harm Agios's competitive positions because it would allow competitors to access sensitive business information.

Agios respectfully submits that the status of the parties as competitors; the wide acceptance of the fact that highly sensitive and confidential information should be afforded protections from disclosure; and the confidential nature of the

information that is the subject of the Proposed Protective Order all weigh strongly in favor of granting this motion.

As shown below, good cause supports this motion.

II. GOOD CAUSE SUPPORTS ENTRY OF THE PROTECTIVE ORDER

Good cause supports entry of the Proposed Protective Order. The Patent Owner's Brief on Discretionary Denial relies on confidential information within Exhibit 2008 that Agios treats as highly sensitive.

Agios certifies that it has conferred with Petitioner regarding the Proposed Protective Order. Petitioner has stated that they consent to the Board's Default Protective Order.

III. GOOD CAUSE EXISTS TO SEAL AGIOS'S CONFIDENTIAL INFORMATION

The Board's Trial Practice Guide provides 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." USPTO, Patent Trial and Appeal Board Consolidated Trial Practice Guide 14 (Nov. 2019) ("Trial Practice Guide"). Further, "[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).

Here, good cause exists to allow Agios to file its Brief on Discretionary Denial and Exhibit 2008 under seal. As described in more detail below, the information in these materials that Agios seeks to seal falls into two general categories: 1) non-public financial and business information related to research and development of PYRUKYND® and AQVESME™; and 2) non-public financial and business information related to Agios's marketing of PYRUKYND® and AQVESME™. As explained in detail below, good cause exists to seal Exhibit 2008, as it contains highly sensitive, non-public, commercial information, disclosure of which would create an elevated risk of commercial harm to Agios and cause a chilling effect on pharmaceutical innovation.

In order to strike the appropriate balance and ensure that only truly confidential information is being sealed, pursuant to the Trial Practice Guide, Agios is concurrently filing a non-confidential, publicly-available version of its Brief on Discretionary Denial and Exhibit 2008 with redactions to Agios's confidential, non-public business information. Further, Agios provides the following non-confidential descriptions of the information in its Brief on Discretionary Denial and Exhibit 2008 that it seeks to seal and the reasons why the information is confidential.

A. Patent Owner's Brief on Discretionary Denial and Exhibit 2008

The Patent Owner's Brief on Discretionary Denial and Exhibit 2008 contain Agios's confidential, non-public business information. The Patent Owner's Brief on

Discretionary Denial contains confidential financial information describing Agios's investment into research, development, and marketing of PYRUKYND® and AQVESME™. The Patent Owner's Brief on Discretionary Denial relies upon Exhibit 2008 for this information, which is a declaration of an Agios employee that provides the aforementioned description of Agios's investment into research, development, and marketing of PYRUKYND® and AQVESME™.

The Board should seal the information in the unredacted Patent Owner's Brief on Discretionary Denial and Exhibit 2008 because these materials include non-public, confidential information that is highly sensitive to Agios. Public disclosure of the financial information contained in these materials would cause Agios serious competitive harm by, for example, providing competitors with a strategic and unfair advantage.

IV. CONCLUSION

For the foregoing reasons, Agios respectfully requests the Board grant this motion, seal the Patent Owner Brief on Discretionary Denial and Exhibit 2008, and enter the Proposed Protective Order filed as Exhibit 2010.

Respectfully submitted,

Dated: July 27, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 27th day of July 2026, a copy of **Patent Owner Agios Pharmaceuticals, Inc.'s Motion to File Documents Under Seal and for a Protective Order** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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