

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERCK SHARP & DOHME LLC,
Petitioner

v.

POGONA, LLC,
Patent Owner.

Case No. IPR2026-00374
U.S. Patent No. 11,058,757

PETITIONER'S MOTION TO SEAL

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.14 and the Trial Practice Guide, Petitioner Merck Sharp & Dohme LLC (“Merck” or “Petitioner”) respectfully submits this Motion to Seal its Response to Patent Owner’s Discretionary Denial Brief and certain exhibits to the same (Ex-1055 and Ex-1057), all of which are being filed concurrently with this Motion. Petitioner also respectfully requests entry of the Default Protective Order, attached to this Motion as Appendix A. Petitioner has asked Pogona, LLC (“Pogona” or “Patent Owner”) whether it agrees to entry of the Default Protective Order, and Pogona has not yet provided a response.

II. GOVERNING RULES AND PTAB GUIDANCE

The Trial Practice Guide provides that “the 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.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012) (“TPG”). The Default Protective Order provides that “[a] party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential.” Default Protective Order ¶ 5(A)(i).

III. IDENTIFICATION OF CONFIDENTIAL INFORMATION

Each of the documents and/or exhibits summarized in Table 1 below (the

“Proposed Sealed Exhibits/Documents”) contains information designated by Petitioner as “PROTECTIVE ORDER MATERIAL,” i.e., Merck’s sensitive and confidential business information. *See* Default Protective Order ¶ 1. Pursuant to the Default Protective Order, Merck submits herewith confidential and non-confidential (redacted) versions of documents where confidentiality is alleged as to some but not all of the information contained therein. *See id.* at ¶ 5(A)(ii).

TABLE 1 – Proposed Sealed Exhibits/Documents

Exhibit(s)/Document(s)	Summary of Contents	Good Cause for Filing Under Seal
Petitioner’s Response	Petitioner’s Response to Patent Owner’s Discretionary Denial Brief	References and discusses confidential exhibits listed below, including confidential financial information of Petitioner
Ex-1055	Declaration of Heather Platt, M.D. in Support of Petitioner’s Response to Patent Owner’s Discretionary Denial Brief	Contains Confidential Business Information of Petitioner including confidential financial information and citations to Ex-1057 below
Ex-1057	April 21, 2015 Merck Internal PowerPoint Presentation (Excerpt)	Contains Confidential Business Information of Petitioner including internal company strategy regarding its vaccine programs

A. Petitioner's Response to Patent Owner's Discretionary Denial Brief

Portions of Petitioner's Response contain discussions of Petitioner's information and documents that Petitioner has marked as "PROTECTIVE ORDER MATERIAL." The discussions of Petitioner's information and documents include references to Petitioner's confidential business information and financial information. The information sought to be sealed has not been published or otherwise made public.

Petitioner has, to the best of its ability, limited the use of confidential information in its Response. To protect any confidential information and financial information, a redacted version of Petitioner's Response to Patent Owner's Discretionary Denial Brief will be filed as soon as possible after this Motion.

B. Petitioner's Documents That it Designated as Confidential

Petitioner has designated Ex-1055 and Ex-1057 as confidential. The confidential information relates to Petitioner's confidential business information and financial information. Petitioner represents that the information and documents have not been published or otherwise made public.

IV. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

Public disclosure of the information contained in Petitioner's Response and exhibits designated as "PROTECTIVE ORDER MATERIAL" would

significantly harm Petitioner.

The public interest will not be harmed by granting this Motion to Seal. To the contrary, given the confidentiality of the underlying information, granting this Motion to Seal would achieve “a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” TPG at 48760. Therefore, good cause exists for granting this Motion to Seal.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board enter the Default Protective Order and seal the designated materials.

Dated: July 29, 2026

Respectfully submitted,

/s/ Ben Haber

Ben Haber (Reg. No. 67,129)

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, I caused a true and correct copy of the foregoing MERCK SHARP & DOHME LLC'S REPLY IN SUPPORT OF MOTION FOR JOINDER was served in its entirety by filing these documents through the PTAB P-TACTS System, as well as by email, on the counsel of record for the Patent Owner:

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Dated: July 29, 2026

Respectfully submitted,

/s/ Ben Haber

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