

From: [McGuffin, Asher S.](#)
To: [Segrest, Philip](#); [Sportel, Nathan](#); [Howe, Steve](#); [Mizerk, Don](#); [Hitchens, A. Lauren](#)
Cc: [WH Merck KGaA Mavenclad ANDA](#); [Whelan, Emily](#); [Geng, Deric](#); [Bassett, David](#); [Ferreira, Vinita](#); [Kan, Cindy](#)
Subject: RE: TWi v. Merck Serono, IPR2023-00049 & -00050: Protective Order
Date: Friday, March 8, 2024 11:29:59 AM
Attachments: [IPR2023-00480, Paper 19 \(Motion to Seal\).pdf](#)

[EXTERNAL EMAIL]

Counsel,

First, thank you for agreeing to use the Board's default protective order for materials for which Patent Owner shows good cause for filing under seal.

Second, Patent Owner anticipates moving to seal the same exhibits it moved to seal in *Hopewell Pharma Ventures, Inc. v. Merck Serono SA*, IPR2023-00480 and -00481:

- The October 2002 Product Development and License Agreement between IVAX, Inc. and Ares Trading S.A.;
- An email and attached draft regulatory briefing document that Serono sent to members of the IVAX team on December 17, 2003; and
- The written minutes of a meeting between Serono and IVAX on August 27, 2003.

Descriptions of the confidential information in each document and explanations of why there is good cause to seal each are included in Patent Owner's motion to seal in IPR2023-00480, Paper 19, which is attached for your reference. Please let us know whether TWi opposes similar motions to seal these three documents here.

Thanks,

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From: Segrest, Philip <Philip.Segrest@huschblackwell.com>

Sent: Tuesday, March 5, 2024 3:27 PM

To: McGuffin, Asher S. <Asher.McGuffin@wilmerhale.com>; Sportel, Nathan <Nathan.Sportel@huschblackwell.com>; Howe, Steve <Steve.Howe@huschblackwell.com>; Mizerk, Don <Don.Mizerk@huschblackwell.com>; Hitchens, A. Lauren <Lauren.Hitchens@huschblackwell.com>

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Subject: RE: TWi v. Merck Serono, IPR2023-00049 & -00050: Protective Order

EXTERNAL SENDER

Counsel,

Patent Owner has not provided sufficient information for Petitioner to agree that good cause exists to seal the materials, which have not been identified. Strong public policy favors making information filed in an *inter partes* review open to the public, and the default rule is that the record of an *inter partes* proceeding shall be made available to the public. *Argentum Pharms. LLC v. Alcon Rsch., Ltd.*, Case IPR2017-01053, 2018 WL 495204, at *1–2 (P.T.A.B. Jan. 19, 2018); *Corning Optical Communications RF, LLC, v. PPC Broadband, Inc.*, Case IPR2014–00440, 2015 WL 1523712, 2015 WL 1888338, 2015 WL 1745114 (PTAB April 6, 14, and 17, 2015) (Papers 46, 47, 49); *Garmin Int’l v. Cuozzo Speed Techs., LLC*, Case IPR2012–00001, 2013 WL 8696523, at *1 (PTAB Mar. 14, 2013) (Paper 34); 35 U.S.C.A. § 316; 37 C.F.R. § 42.14. A party moving to seal must show “good cause” for the relief requested. *Argentum*, 2018 WL 495204, at *1.

“Good cause” for sealing is established by a “sufficient explanation as to why” the “information sought to be sealed is confidential information”; a demonstration that the information is not “excessively redacted”; and a showing that, on balance, the strong “public[] interest in maintaining a complete and understandable record” is outweighed by “the harm to a party, by disclosure of information” and “the need of either party to rely specifically on the information at issue.” *Id.* (quoting *Garmin*, Paper 34 at 3, 2013 WL 8696523 and *Corning*, Paper 47 at 2–3, 2015 WL 1888338). 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. *Id.* (quoting *Corning*, Paper 47 at 2–3, 2015 WL 1888338, Paper 49 at 2, 2015 WL 1745114); 37 C.F.R. § 42.54(a). To show good cause the movant must (a) identify (i) the information believed to be confidential and sought to be sealed and (ii) the need of the party presenting the information to rely on the information; (b) explain (i) what adverse consequences and harm would result from public disclosure of each item of information sought to be sealed, and (ii) why the party presenting the item of information must rely, specifically, on the subject information; and (c) balance all three of (i) the public’s interest in maintaining a complete and understandable record, (ii) the harm to a party, by disclosure of information, and (iii) the need of either party to rely specifically on the information at issue. *Corning*, Paper 47 at 2–3, 2015 WL 1888338.

Patent Owner has not identified the documents it will ask to be sealed. It has not identified its need to rely on the information. It has not shown that the information sought to be sealed is truly confidential. It has not indicated what information should be redacted and what can be filed in a public copy. It has not explained what adverse consequences and concrete harm would result from public disclosure of each item of information sought to be sealed. It has also not shown that on balance an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

Petitioner therefore does not agree to the filing of the unidentified information under seal. If Patent Owner sufficiently shows good cause for filing materials under seal, Petitioner does not object to use of the Default Protective Order from the Consolidated Trial Practice Guide, Appendix B. We note that the attachment to your email includes Protective Order Guidelines from pages 107–116 in addition to the template for the Default Protective Order from pages 117–122, and is not formatted for entry in these specific proceedings.

Philip D. Segrest, Jr.

(he/him/his)

Partner

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From: McGuffin, Asher S. <Asher.McGuffin@wilmerhale.com>

Sent: Thursday, February 29, 2024 2:27 PM

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Subject: TWi v. Merck Serono, IPR2023-00049 & -00050: Protective Order

[EXTERNAL EMAIL]

Counsel,

We anticipate submitting confidential materials in connection with our Patent Owner Response in IPR2023-00049 and -00050. Accordingly, we would like to move to seal certain documents and for entry of a protective order, specifically the PTAB's default protective order, a copy of which is attached.

Please let us know if TWi opposes our motion to seal and if TWi consents to entry of the PTAB's default protective order.

Best,

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