

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWI PHARMACEUTICALS INC.,

Petitioner,

v.

MERCK SERONO SA,

Patent Owner.

IPR2023-00049 (Patent 7,713,947 B2)

Before ULRIKE W. JENKS, ZHENYU YANG and TINA HULSE,
Administrative Patent Judges.

PETITIONER'S NOTICE OF FILING UNDER SEAL

Petitioner TWi Pharmaceuticals Inc. (“Petitioner”) hereby respectfully submits this Notice of Filing Under Seal Exhibits 1043, 1044, and 1045 to Petitioner’s Motion for Additional Discovery (Paper 52) and portions of the Motion which reference these exhibits.

These Exhibits are transcripts of the depositions of Patent Owner’s witnesses, which Patent Owner has designated as confidential and requested be filed under seal.

Pursuant to 37 C.F.R. § 42.14, “[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.” In this instance, it is Patent Owner who contends the exhibits at issue should be maintained under seal. Accordingly, to comply with its obligations under the Default Protective Order, and in an abundance of caution, Petitioner is filing these materials under seal.

While Petitioner does not believe the exhibits are in fact confidential, Petitioner understands it is Patent Owner’s burden as the party that designated the material as confidential to set forth the reasons why the material is confidential and should not be made available to the public. Appendix B to Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) at § (d)(5)(A)(i).

Petitioner will take a position regarding the sealing of the affected documents following the submission of Patent Owner’s reasons for confidentiality.

June 12, 2024

Respectfully submitted,

/Philip D. Segrest, Jr./

Philip D. Segrest, Jr. (Reg. No. 39,021)

philip.segrest@huschblackwell.com

Lead Counsel for Petitioner

Nathan P. Sportel

Stephen R. Howe

Don J. Mizerk (*pro hac vice*)

Backup Counsel for Petitioner

HUSCH BLACKWELL LLP

120 South Riverside Plaza, Suite 2200

Chicago, IL 60606

Tel. 312-655-1500

Fax. 312-644-1501

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.105, Petitioner certifies that the foregoing document was served via electronic mail to the attorneys of record in this proceeding at the following:

WILMER CUTLER PICKERING HALE AND DORR LLP
WHMerckMavencladIPRs@wilmerhale.com
Counsel for Patent Owner

Emily R. Whelan (Reg. No. 50,391)
Emily.Whelan@wilmerhale.com
Vinita Ferrera (*pro hac vice*)
Vinita.Ferrera@wilmerhale.com
Deric X. Geng, Ph.D. (Reg. No. 73,434)
Deric.Geng@wilmerhale.com
Scott Bertulli (Reg. No. 75,886)
Scott.Bertulli@wilmerhale.com

Asher S. McGuffin (Reg. No. 81,206)
Asher.McGuffin@wilmerhale.com
David B. Bassett (*pro hac vice*)
David.Bassett@wilmerhale.com
Cindy Kan (Reg. No. 76,385)
Cindy.Kan@wilmerhale.com
Mary Pheng (*pro hac vice*)
Mary.Pheng@wilmerhale.com
Gillian T. Farrell (*pro hac vice*)
Gillian.Farrell@wilmerhale.com

June 12, 2024

/Philip D. Segrest, Jr./

Philip D. Segrest, Jr. (Reg. No. 39,021)
philip.segrest@huschblackwell.com
Lead Counsel for Petitioner

Nathan P. Sportel
Stephen R. Howe
Don J. Mizerk (*pro hac vice*)
Backup Counsel for Petitioner
HUSCH BLACKWELL LLP
120 South Riverside Plaza, Suite 2200
Chicago, IL 60606
Tel. 312-655-1500
Fax. 312-644-1501