

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 for Exhibit 1041 and portions of Petitioner’s Reply which reference exhibits for which Patent Owner has previously submitted its Motion to Seal.

Also submitted with this filing is a redacted version of Exhibit 1045, of which the sealed, unredacted version was previously filed in support of Petitioner’s Motion for Additional Discovery.

Exhibit 1041 is a transcript of the deposition of Patent Owner’s witness in a district court matter, which Patent Owner has designated as confidential and requested be filed under seal.

Petitioner’s Reply also references, on pages 3-5, Exhibits 1043, 1044, 1045, 2049, and 2050, for which Patent Owner has previously filed a Motion to Seal. Petitioner opposed the Motion to Seal, which is still pending.

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 20, 2024

Respectfully submitted,

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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:

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June 20, 2024

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