

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL  
BOARD**

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HOPEWELL PHARMA VENTURES, INC.,  
Petitioner,

v.

MERCK SERONO SA,  
Patent Owner.

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Case IPR2023-00481

U.S. Patent 8,377,903

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**PATENT OWNER'S UNOPPOSED MOTION TO SEAL**

## **I. INTRODUCTION**

Under 37 C.F.R. §§ 42.54 and 42.14, Patent Owner, Merck Serono SA, hereby moves to seal Patent Owner’s Demonstrative Exhibits, Paper 56, submitted on June 20, 2024. Good cause to seal Patent Owner’s Demonstratives exists because they include excerpts of documents containing highly confidential, competitively sensitive information of Patent Owner, which Patent Owner designated as “PROTECTIVE ORDER MATERIAL.” Patent Owner previously moved for entry of the Board’s Default Protective Order with Petitioner’s consent. Paper 19. Patent Owner and Petitioner previously moved to seal documents that are excerpted in Patent Owner’s Demonstrative Exhibits. Papers 19, 42.

## **II. AUTHORIZATION FOR THIS MOTION**

Prior Board authorization is not required for “motions where it is impractical for a party to seek prior Board authorization.” Consolidated Trial Practice Guide (Nov. 20, 2019) (the “Consolidated Trial Practice Guide”), p. 37. “Motions where it is not practical to seek prior Board authorization include motions to seal. . . .” *Id.*

## **III. CERTIFICATION OF CONFERENCE**

Under 37 C.F.R. § 42.54, Patent Owner, through the undersigned,

hereby certifies that it has conferred with Petitioner through counsel on June 20, 2024 in good faith regarding this motion. Petitioner does not oppose Patent Owner's Motion to Seal.

#### **IV. GOOD CAUSE EXISTS FOR SEALING PATENT OWNER'S DEMONSTRATIVE EXHIBITS**

The Board may issue protective orders for good cause to protect a party from disclosing confidential information. Consolidated Trial Practice Guide, pp. 19-20; 37 C.F.R. § 42.54. In deciding whether to grant a motion to seal, the Board must find "good cause," and must "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." *Garmin International, Inc. et al. v. Cuozzo Speed Technologies LLC*, IPR2012-00001, Paper 36 at 4 (P.T.A.B. April 5, 2013). "Confidential Information" is identified in a manner consistent with Fed. R. Civ. P. 26(c)(1)(G), "which provides for protective orders for trade secret or other confidential research, development, or commercial information." *Id.*

Good cause for sealing material can be established by demonstrating that the balance of the following considerations favors sealing the material: whether (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. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 4 (P.T.A.B. January 19, 2018).

Patent Owner's Demonstrative Exhibits, Paper 56, contain confidential research, development, or business information designated as "PROTECTIVE ORDER MATERIAL" under the Default Protective Order that was agreed-upon by the parties. Specifically, it contains confidential excerpts of Exhibits 1063, 2049, and 2050, which Patent Owner and Petitioner previously moved to seal. Papers 19, 42. The balance of the *Argentum* factors favors sealing Patent Owner's Demonstrative Exhibits.

**a. Patent Owner's Demonstrative Exhibits Contain Confidential Information**

The information Patent Owner seeks to seal in Patent Owner's Demonstrative Exhibits is "truly confidential." *See* Fed. R. Civ. P. 26(c)(1)(G). Patent Owner's Demonstrative Exhibits contain confidential technical information regarding drug development of Patent Owner and non-parties to this proceeding. The information contained in Patent Owner's Demonstrative Exhibits is subject to non-party confidentiality obligations

(e.g., with development partners and Patent Owner's affiliate) or would cause competitive business harm to Patent Owner if publicly disclosed.

*First*, Patent Owner's Demonstrative Exhibits include excerpts of the December 17, 2003, Briefing Document (Ex. 2049), which is a true and correct copy of an email communication and attachment sent from Serono to IVAX and Serono personnel on December 17, 2003 and concerns the subject matter of the IVAX-Serono Agreement, Ex. 2048. The communication contains a highly confidential draft "Briefing Document" concerning Serono's development plan for an oral cladribine drug product, including Patent Owner's confidential technical data, research data, and prospective research and clinical development plans. *See* Ex. 2049.

*Second*, Patent Owner's Demonstrative Exhibits include excerpts of the August 27, 2003, Meeting Minutes (Ex. 2050), which is a true and correct copy of confidential meeting minutes between IVAX's and Serono's drug development teams held on August 27, 2003, concerning the subject matter of the IVAX-Serono Agreement, Ex. 2048. The August 27, 2003, Meeting Minutes includes highly confidential information related to the ongoing development of the joint research efforts of Ares Trading S.A. and IVAX, including technical data reports and prospective research and clinical development plans. *See* Ex. 2050.

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