

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HOPEWELL PHARMA VENTURES, INC.,
Petitioner

v.

MERCK SERONO S.A.,
Patent Owner

Case IPR2023-00481
U.S. Patent No. 8,377,903

**PETITIONER HOPEWELL PHARMA VENTURES, INC.’S
MOTION TO SEAL EXHIBIT 1092**

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I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner Hopewell Pharma Ventures, Inc. (“Hopewell”) respectfully submits this Motion to Seal Exhibit 1092, Hopewell’s Demonstratives for Oral Argument (“Hopewell’s Demonstratives”). The parties have met and conferred regarding this Motion to Seal, as required by 37 C.F.R. § 42.54(a), and Patent Owner Merck Serono, S.A. (“Merck”) has stated it will not oppose this motion.

All of the confidential material submitted in this proceeding belongs to Merck. Good cause to seal exists because Merck has represented to Hopewell that certain information in Hopewell’s Demonstratives is “highly confidential, competitively sensitive information.” Mot. To Seal And For Entry of Default Protective Order, 2, *Hopewell Pharma Ventures, Inc. v. Merck Serono SA*, IPR2023-00481 (P.T.A.B. Dec. 21, 2023) (“Paper 19”). Hopewell therefore submits this Motion to Seal under the Default Protective Order in this case. *See* Papers 19 and 42.

II. GOVERNING RULES AND PTAB GUIDANCE

While under 35 U.S.C. § 316(a)(1), papers filed in an *inter partes* review are generally open and available for access by the public, a party may file a concurrent Motion to Seal to protect public disclosure of certain confidential information, which has the effect of sealing the information at issue pending resolution of the

motion. In determining whether to grant a Motion to Seal, the Board must find “good cause,” 37 C.F.R. § 42.54(a), and “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,” Consolidated Trial Practice Guide, November 2019 (“TPG”), 19. The Board identifies confidential information in a manner “consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for ... confidential research, development, or commercial information.” TPG, 19.

Based on the procedure set forth in the TPG, Hopewell seeks to prevent the disclosure of sensitive information that Merck has represented is contained in Hopewell’s Demonstratives.

III. IDENTIFICATION OF CONFIDENTIAL DOCUMENTS

The confidential information at issue here comprises a portion of Hopewell’s Demonstratives (Exhibit 1092), which quotes and characterizes exhibits previously filed under seal by Merck (Exhibits 2048, 2049, and 2050), as well as other documents previously filed under seal by Hopewell (Exhibits 1059, 1060, 1063, 1080, and 1084, and the Petitioner’s Reply) that discuss Exhibits 2048, 2049, and 2050 (collectively, “the Confidential Documents”). Paper 19, 4–7; Paper 42, 3–4.

* * *

To the best of Hopewell’s knowledge, and based on Merck’s representation

that the Confidential Documents and the information contained therein are indeed confidential, the information sought to be sealed has not been published or otherwise made public.

IV. GOOD CAUSE EXISTS FOR SEALING THE CONFIDENTIAL INFORMATION.

The standard for granting a motion to seal is “good cause.” *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34 at 3 (P.T.A.B. Mar. 14, 2013). This requires the Board 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.” *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 36 at 4 (P.T.A.B. Apr. 5, 2013). Good cause can be established by demonstrating that (1) the information sought to be sealed is truly confidential, (2) 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, the 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. Jan. 19, 2018).

Merck previously submitted Exhibits 2048, 2049, and 2050 under seal, stating that they contained “confidential technical information regarding drug development and/or financial and business information of [Merck] and non-parties” in this proceeding, which are “subject to non-party confidentiality

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