

U.S. Patent No. 8,859,623
Petitioner's Motion to Seal

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Altaire Pharmaceuticals, Inc.,
Petitioner.

v.

Paragon BioTeck, Inc.,
Patent Owner.

Case PGR 2015-00011
Patent 8,859,623 B1

PETITIONER'S MOTION TO SEAL

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54 and the Protective Order entered in this proceeding (Exh. 2012), Petitioner Altaire Pharmaceuticals, Inc. ("Petitioner") hereby moves to seal Sawaya deposition transcript ("Exh. 2034") and Patent Owner's Response ("Paper 20"), which include information that Petitioner and third party Sawaya Aquebogue LLC ("Saw Aque") consider highly confidential and extremely sensitive, the disclosure of which is likely to cause significant harm to the competitive position of Petitioner.

The information Petitioner seeks to seal does not relate to the patentability of the claims of the '623 patent, and the merits of this proceeding can be resolved without disclosure of the materials Petitioner seeks to seal. The public interest therefore does not outweigh the likely harm to Petitioner and third party Saw Aque if the information were to be disclosed.

II. GOOD CAUSE EXISTS FOR SEALING THIS INFORMATION

In deciding whether to seal documents, 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 Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 36, 4 (P.T.A.B. Apr. 5, 2013). In this proceeding, the

material sought to be sealed does not relate to the patentability of the claims of the '623 patent, and therefore the balance favors sealing the documents.

A. Petitioner and Saw Aque are Privately Held and the Ownership, Operation, and Valuation Information is Confidential.

Petitioner seeks to seal information related to corporate strategic operation and planning, board decision making procedures, ownership interests of privately held entities, and financial information. Both Petitioner and Saw Aque are privately held entities that maintain the materials sought to be sealed as confidential, and do not make such information publicly available. Exh. 1024, ¶¶ 2-5.¹

B. Release of this Information Would Cause Significant Economic and Competitive Harm to Petitioner.

The disclosure of the information Petitioner seeks to seal would cause significant economic and competitive harm to Petitioner. *Id.* at ¶¶ 6-8. Disclosure would allow a competitor or potential investors to access Petitioner's highly sensitive financial information and strategic decision making processes. *Id.* Allowing this information to become public could provide competitors an advantage in negotiating with or against Petitioner and third party Saw Aque, as well as provide an in-depth view of the high level strategic decision making by

¹ Petitioner seeks to seal the same type of information Patent Owner itself sought to seal. *See e.g.*, Paper 6 at 3.

Petitioner. *Id.* This information reveals sensitive financial information which could potentially impact negotiations with any potential investor. *Id.*

C. Disclosing the Confidential Information is Not Necessary to Maintain a Complete and Understandable Public Record

“There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public.” *Daicel Corp. v. Celanese Int’l Corp.*, IPR2015-00170, Paper 70, 7 (P.T.A.B. Jan. 20, 2016). The confidential information Petitioner seeks to seal is solely related to the real party-in-interest issue and not related to patentability of the claims of the ’623 patent. This is evident by Paper 20, which contains a section directed to real party-in-interest (*see* Paper 20, p. 14-28) that is separate and distinct from the sections addressing the merits of this proceeding (*see id.* at p. 28-54). The portion of Paper 20 that contains redactions refers only to the real party-in-interest. Accordingly, the public will have full access to everything of record addressing the merits of this proceeding (i.e., the patentability of the challenged claims). Thus, any public interest in a complete and understandable record is sated.

In addition, in order to ensure that the public has access to a complete and understandable file history, Petitioner has narrowly tailored its request such

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that the redactions are limited to isolated portions that consist of confidential information of Petitioner, Patent Owner, and third party Saw Aque. *See* Exh. A.

III. CONCLUSION

For the above reasons, the balance of interests favors maintaining the redactions to Exhibit 2034 and Paper 20.

Dated: February 29, 2016

Respectfully submitted,

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