Paper No. ___
Filed: March 7, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALTAIRE PHARMACEUTICALS, INC.,
Petitioner,

v.

PARAGON BIOTECK, INC.,
Patent Owner.

Case PGR2015-00011
Patent 8,859,623

PARAGON'S OPPOSITION TO PETITIONER'S MOTION TO SEAL

Paragon does not oppose the motion to seal only to the limited extent that it seeks to seal information regarding certain specific terms of a non-public agreement between the parties (specifically, [redacted] *See* Paper 6; *see also* Exhibit A. Petitioner, however, moves to keep large swaths of the deposition of Al Sawaya under seal, which would also necessitate keeping under seal an entire section of Paragon's Patent Owner Response. Petitioner's motion to seal should be denied because Petitioner (1) has not established entitlement to the relief requested, and (2) aims to prevent public access to the truth regarding the common ownership and control of Altaire Pharmaceuticals and Sawaya Aquebogue [redacted]

In support of its motion, Petitioner provides nothing more than conclusory statements and yet another unauthorized[1] conclusory declaration from a member of the Sawaya family. *See also* Ex. 1022. A review of the transcript at issue shows Petitioner's unsupported assertions in its motion are not true. *See* Exhibit A. To the extent that Petitioner's proposed redactions are explicable at all, they do not seek to protect sensitive business information, they seek to hide the truth from the public and the legal system because it is inconsistent with representations made

[1] The declaration (Ex. 1024) should be expunged. However, it contains the same conclusory statements found in the motion and so is not addressed separately.

publicly by the Sawayas to the Board and the U.S. district courts, fatal to the Sawayas' litigation positions, and embarrassing to the Sawayas.

I. PETITIONER HAS NOT ESTABLISHED ENTITLEMENT TO THE RELIEF REQUESTED

Public policy favors public access to Board proceedings and motions to seal are only granted "for good cause." *Garmin v. Cuozzo*, IPR2012-00001, Paper 34 at 1-3 (quoting 37 C.F.R. § 42.54). Petitioner has the burden of showing entitlement to a seal, 37 C.F.R. § 42.20(c), which requires more than mere conclusory statements of the need for protection, *Corning v. PPC Broadband*, IPR2014-00736, Paper 37 at 2. Finally, only information that is confidential may be afforded protection. 35 U.S.C. § 326(a)(7).

As an initial matter, Petitioner requests too many proposed redactions involving non-confidential information to address each individually. By way of example, Petitioner proposes redacting [redacted] *See, e.g.* Ex. 2034, 32:15-19.[2] Al Sawaya, however, already publicly testified that Sawaya Aquebogue is an LLC that holds real property. Ex. 1022 ¶¶ 1-3, 13. Further, property records are a matter of public record and establish that Sawaya Aquebogue owns the facility rented by Altaire.

[2] Only proposed redactions to the deposition transcript (Ex. 2034) are addressed, because they are the reason for the other proposed redactions.

Ex. 2032.

Moreover, Petitioner's proposed redactions include [redacted] *See, e.g.* Ex. 2034, 68:2-11. It is not confidential that there is at least one general partner of Sawaya Aquebogue, because every LLC has at least one general partner. And Al Sawaya publicly testified that he is a "General Manager of Sawaya Aquebogue, LLC," (Ex. 1022 ¶ 1), by which he meant [redacted] of Sawaya Aquebogue. (*See, e.g.* Ex. 2034, 23:15-21).

Further, Petitioner proposes redacting the perceived benefit of this post-grant review to Altaire shareholders—[redacted] Ex. 2034, 16:7-15. Petitioner also proposes redacting testimony that [redacted] *Id.* at 19:4-10. Neither is confidential, let alone sensitive.

Petitioner concludes, without basis, that "[d]isclosure would allow a competitor or potential investors to access Petitioner's highly sensitive financial information and strategic decision making processes." Paper 24 at 2. The transcript at issue contains no financial information, and it is incredible to suggest that a potential investor would not inquire into the ownership and decision-making processes of a company prior to investing. Further, it is difficult to understand how the ownership of a corporation [redacted] (Ex. 2034, 7:18-8:3) and the ownership of an [redacted] (Ex. 2034, 21:3-14)—to be clear, [redacted]—could possibly

be confidential, let alone sensitive.

Petitioner argues that because the proposed redactions do not relate to patentability that "any public interest in a complete and understandable record is sated." Paper 24 at 3. That proposition is unsupported by the rules. *See* 37 C.F.R. § 42.14. Indeed, the redacted information would need to be made public should the Board decide this case on RPI grounds. *See* 77 Fed. Reg. at 48761.

Petitioner's conclusory statements are insufficient to establish "good cause" and many of Petitioner's proposed redactions encompass publicly available information. Accordingly, Petitioner's motion should be denied.

II. THE PUBLIC SAWAYA DECLARATION IS UNTRUE AND INCONSISTENT WITH HIS DEPOSITION TESTIMONY

Beyond lacking a basis, Petitioner's motion seeks to perpetuate a falsehood, to the ongoing harm of Paragon. Al Sawaya publicly testified that "Altaire and Saw[aya] Aque[bogue] are not under common control or even run by the same person, with each having different ownership interests and different controlling interests." Ex. 1022 ¶ 6. During the deposition of Al Sawaya, it became clear that this statement was untrue. "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." L. BRANDEIS, OTHER PEOPLE'S MONEY 62 (1913). Petitioner should not be allowed to use the Board's authority to hide the true nature of ownership and control from public light.

Petitioner seeks to seal information related to "ownership interests of

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