

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 B1

Before SHERIDAN K. SNEDDEN, ZHENYU YANG, and
CHRISTOPHER G. PAULRAJ, *Administrative Patent Judges*.

YANG, *Administrative Patent Judge*.

DECISION
Petitioner's Motion to Seal
37 C.F.R. §§ 42.14, 42.54

Petitioner filed a Motion to seal portions of the deposition transcript of Assad Sawaya (Ex. 2034) and Patent Owner's Response (Paper 20).¹ Paper 24 ("Mot."), 1. Patent Owner filed a confidential version (Paper 25) and a redacted version (Paper 26) of Opposition to the Motion ("Opp."). Petitioner's Motion is denied without prejudice.

There is a strong public policy in favor of making information filed in a post-grant review open to the public. Generally, the record of a post-grant review proceeding shall be made available to the public. 35 U.S.C. § 326(a)(1); 37 C.F.R. § 42.14. Our rules, however, "aim 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." Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). Thus, a party may move to seal certain information (37 C.F.R. § 42.14); but only "confidential information" is protected from disclosure (35 U.S.C. § 326(a)(7)). Confidential information means trade secret or other confidential research, development, or commercial information. 37 C.F.R. § 42.2.

As the movant, Petitioner bears the burden of proof to demonstrate that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). The standard for granting a motion to seal is "for good cause." 37 C.F.R. § 42.54(a). Petitioner must provide sufficient facts to demonstrate that the materials it

¹ On February 22, 2016, at the request of Petitioner, the panel held a conference with the parties, discussing the proper procedure to avoid disclosing confidential information. During the call, Patent Owner stated that it saw no need to keep most, if not all, of the redacted information under seal. Nevertheless, according to Patent Owner, it filed a redacted version of the Response (Paper 21) because Petitioner insisted so.

seeks to seal is confidential. *See Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, Case IPR2014-00736, Paper 37, slip op. at 2–3 (PTAB Apr. 6, 2015).

Petitioner asserts that the information it seeks to seal relates to “corporate strategic operation and planning, board decision making procedures, ownership interests of privately held entities, and financial information.” Mot. 2. According to Petitioner, the disclosure of such information “would cause significant economic and competitive harm to Petitioner.” *Id.*

Patent Owner states that it does not oppose the Motion to the extent that “it seeks to seal information regarding certain specific terms of a non-public agreement between the parties.” Opp. 1. According to Patent Owner, “Petitioner, however, moves to keep large swaths of the deposition of Al Sawaya [Ex. 2034] under seal, which would also necessitate keeping under seal an entire section of Paragon’s Patent Owner Response [Paper 20].” *Id.*

After reviewing the confidential and the redacted versions of Exhibit 2034 and Paper 20, we determine that those documents have been excessively redacted. In both documents, Petitioner requests to redact numerous pages of materials, without specifically explaining why the information is confidential. *See* Mot. 5–10. For example, Al Sawaya previously testified that “Saw Aque is a holding company that holds real property.” Ex. 1022 ¶ 8. Even though Exhibit 1022 was filed under the protective order, Petitioner chose not to redact this information. Because this information is public, Petitioner cannot now assert it is confidential. *See* Mot. 6 (seeking to redact Ex. 2034, 32:15–19).

Petitioner’s Motion is also conclusory, with essentially no presentation of specific facts for a meaningful analysis. For example,

Petitioner asserts that disclosure of the redacted information “would allow a competitor or potential investors to access Petitioner’s highly sensitive financial information and strategic decision making processes.” Mot. 2. Based on our review of the record, neither Exhibit 2034 nor Paper 20 appears to contain any financial information. In another example, Petitioner seeks to redact the question and answer relating to how its shareholders may benefit from successfully challenging the patentability of the ’623 patent. *See* Mot. 5 (requesting redaction of Ex. 2034, 16:7–10, 13–15). Petitioner does not explain how this redacted information relates to, as Petitioner asserts, “corporate strategic operation and planning, board decision making procedures, ownership interests of privately held entities, and financial information.” *See* Mot. 2.

Upon considering the content of Exhibit 2034 and Paper 20, we determine that Petitioner has not shown a good cause to seal the redacted portions thereof. We recognize that a denial of Petitioner’s Motion, in the normal course, would result in immediately unsealing the material Petitioner desires to be placed under seal, which would be irreversible. Instead of denying the Motion outright, we, however, provide Petitioner five business days, if it chooses to do so, to file a renewed motion to seal supported by a declaration by an officer of Petitioner. In the renewed motion and/or the supporting declaration, Petitioner must (1) explain why *each* portion of the information in Exhibit 2034 and Paper 20 it seeks to redact constitutes “confidential information” as defined in 37 C.F.R. § 42.2; and (2) explain why good cause exists for *each* redaction.

Accordingly, it is

ORDERED that Petitioner’s Motion is *denied* without prejudice;

FURTHER ORDERED the current redacted version of the deposition transcript of Assad Sawaya (Ex. 2034) and Patent Owner's Response (Paper 21) are expunged from the record;

FURTHER ORDERED Petitioner must review the redactions to the deposition transcript of Assad Sawaya (Ex. 2034) and Patent Owner's Response (Paper 20), and un-redact any portions with information that is not "confidential information" as defined in 37 C.F.R. § 42.2;

FURTHER ORDERED that as to any remaining redactions, Petitioner is authorized to file a renewed motion to seal;

FURTHER ORDERED that the renewed motion to seal is limited to seven pages and must be filed within five business days of the entry date of this Order;

FURTHER ORDERED that the renewed motion to seal must be supported by a declaration by an officer of Petitioner, attesting to the necessity for *each* redaction, including the confidential nature of the redacted material, and the specific alleged harm to Petitioner that would result from its disclosure;

FURTHER ORDERED that Patent Owner is authorized to file an opposition to Petitioner's renewed motion to seal;

FURTHER ORDERED that Patent Owner's opposition is limited to seven pages and must be filed within five business days of the filing date of Petitioner's renewed motion to seal.

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