

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 MOTION TO SEAL PAPER 20 AND EXHIBIT 2034

I. STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.14, Patent Owner Paragon BioTeck, Inc. (“Paragon” or “Patent Owner”) respectfully moves to seal Patent Owner’s Response (Paper 20) and the deposition transcript of Assad Sawaya (Ex. 2034). This motion is supported by a declaration of Patrick Witham, President of Paragon. (Ex. 2041). Redacted versions of both documents are being filed concurrently with this motion. As described in more detail below, Paper 20 and Exhibit 2034 contain confidential and sensitive information related to a confidential agreement between the parties. Paragon has not and would not make the information it seeks to seal publicly available, and public disclosure would harm Paragon.

Paragon previously moved for entry of the default protective order and to seal substantially the same information found in earlier filings. (Paper 6). Petitioner did not oppose. The Board granted the motion to seal and entered the default protective order. (Paper 12).

On February 29, Petitioner filed a motion to seal portions of Paper 20 and Exhibit 2034. (Paper 24). Paragon did not oppose the motion only to the limited extent that it sought to seal information regarding certain specific terms of a non-public agreement between the parties. (Paper 26). On March 29, the Board denied Petitioner’s motion, but authorized Petitioner to file a renewed motion within five business days. (Paper 27). Petitioner has not filed a renewed motion. On April 8,

the Board issued a corresponding order. (Paper 30). On April 11, the Board authorized Paragon to file its own motion to seal Paper 20 and Exhibit 2034. (Paper 31).

Accordingly, Paragon files this motion to seal portions of Paper 20 and Exhibit 2034, limited to the disclosure of certain specific terms of a non-public agreement between the parties.

II. GOOD CAUSE EXISTS FOR SEALING CONFIDENTIAL INFORMATION

The record of a proceeding is open and available for access by the public. *See* 37 C.F.R. § 42.14. The Board must find “good cause” to seal documents. *Garmin v. Cuozzo*, IPR2012-00001, Paper 36 at 3 (PTAB April 5, 2013). “The rules 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.” *The Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

The information Paragon seeks to seal is limited to certain specific financial terms of a non-public agreement between the parties. Disclosure of this information would significantly harm Paragon at least because revealing the precise terms of the confidential agreement between Paragon and Petitioner to current or potential competitors, investors, or partners of Paragon could negatively

impact Paragon in future negotiations with those third parties.

First, per the terms of the agreement between the parties, the parties agreed “that any/all writings, documents, data and/or information that *reveals the financial data and business information* relating to a party are the proprietary and *confidential information* of such party, and may *not be disclosed to any third party* without the written consent of said party.” (See Ex. 2001 at 9 (emphases added)). Paper 20 and Exhibit 2034 reveal confidential business information relating to the relationship between Paragon and Altaire, and the terms of the agreement require that at least the portions of Paper 20 and Exhibit 2034 reflecting such information be kept confidential.

Second, disclosure of the confidential business information contained in Paper 20 and Exhibit 2034 would allow current or potential competitors, investors, or partners to know the precise consideration provided pursuant to the agreement. Access to such sensitive business information could provide a competitor a business advantage over Paragon and could negatively impact negotiations between Paragon and current or potential investors and partners.

Paragon has redacted only the very specific and very limited information that it considers confidential and highly sensitive. See Appendix *infra*. The Board has previously maintained information under seal when the moving party has proposed reasonable redactions such that the thrust of the argument or evidence

can be reasonably understood from the redacted versions. *Greene's Energy Grp., LLC, Inc. v. Oil States Energy Svcs., LLC*, IPR2014-00216, Paper 27 at pg. 5 (Sept. 23, 2014). Indeed, the Board has previously sealed substantially the same information in this proceeding. (Paper 12). None of Paragon's arguments in its Patent Owner Response rely on the specific content that Paragon proposes redacting. As such, there is little legitimate public interest in favor of disclosing this sensitive business information, and the public interest will not be harmed by filing Paper 20 and Exhibit 2034 under seal as "PROTECTIVE ORDER MATERIAL."

III. CONFIDENTIAL INFORMATION IS NOT PUBLICLY AVAILABLE

Paragon certifies the information identified in Paper 20 and Exhibit 2034 and sought to be sealed is not publicly available. In a related district court case, Petitioner's counsel filed an unredacted version of the referenced agreement. The unredacted version was promptly removed from the public docket. Petitioner's filing of the unredacted version was a violation of the agreement between the parties.

IV. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37 C.F.R. §42.54

Counsel for Paragon has conferred with counsel for Petitioner. Paragon understands that Petitioner does not oppose sealing the requested portions of Paper

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