

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.

U.S. Patent No. 8,859,623
CASE: PGR2015-00011

PETITIONER'S MOTION TO SEAL

I. STATEMENT OF RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.14 and the previously submitted Protective Order (Exh. 2012), Altaire Pharmaceuticals, Inc. ("Petitioner") respectfully moves to seal portions of its Reply ("Petitioner's Reply"), portions of Exhibit 1029, and Exhibits 1027, 1028, and 1030 (*see* Table 2 below). As detailed below, Petitioner's Reply and the Exhibits contain information that (a) Paragon BioTeck, Inc. ("Paragon" or "Patent Owner") considers highly confidential, and (b) Altaire considers highly confidential and extremely sensitive and does not wish to be made publicly available.

II. PARAGON ALLEGES GOOD CAUSE EXISTS FOR SEALING INFORMATION

Petitioner seeks to seal portions of its Reply that Patent Owner considers highly confidential. As asserted in its Motion to Seal filed August 24, 2015, Paragon asserts this information is not publicly available, and that disclosure of this information would significantly harm Paragon. *See* Patent Owner's Motion to Seal and Motion for entry of Protective Order Pursuant to 37. C.F.R. § 42.14 and § 42.54, PGR2015-00011, Paper 6, 2 (P.T.A.B. 2015).¹

¹ Contrary to Patent Owner's representations, Petitioner does not agree that the information is highly confidential; however, as a courtesy, Petitioner has not opposed Patent Owner's motions to seal the information.

As such, Petitioner has redacted only the specific information relating to the Agreement that Paragon has previously redacted from Exhibit 2004. *See* Table 1 *infra*.

TABLE 1

Paper No.	Title	Portions with Redacted Information
Paper No.	Petitioner's Reply	p. 21, ll. 8-9 p. 23, l. 10 p. 25, ll. 2-3

III. GOOD CAUSE EXISTS FOR SEALING PETITIONER'S INFORMATION

Petitioner seeks to file portions of Exhibits 1027-1030 under seal. The information Petitioner seeks to seal reflects proprietary and confidential testing methodologies developed by Petitioner. *See* Ex. 1003 at ¶ 21. Petitioner's patentability arguments relate to the results generated, and previously publicly disclosed, by these testing methodologies, and are included in reply to Patent Owner's arguments.

Petitioner's testing methods have not been published or otherwise made public. Petitioner, instead, has taken efforts to maintain the confidentiality of this information. For example, Exhibits 1027 and 1030 are marked: "This document contains information that is privileged, confidential and is protected from disclosure under applicable law. This document is the sole property of Altaire Pharmaceuticals, Inc." *See* Ex. 1027; Ex. 1030. Exhibit 1028 similarly recites the same information as Exhibit 1027, and Petitioner has treated Exhibit 1028 as confidential and efforts have been made to ensure it does not become publicly available. *See, e.g.*, Ex. 1003 at ¶ 21.

Similarly, Petitioner redacted only specific information from Exhibit 1029 that it considers confidential information relating to its proprietary and confidential testing methodologies discussed above. As such, Petitioner has narrowly redacted the testimony.

Disclosure of the information could significantly harm at least Petitioner's competitiveness in the market. As Petitioner has previously asserted, the information disclosed in Exhibits 1027-1030 reflect proprietary testing methodologies capable of distinguishing R and S phenylephrine hydrochloride. The disclosure of Petitioner's proprietary information would allow competitors to

successfully employ Petitioner's methodologies without incurring the costs associated with the research and development of those methodologies.

“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.” *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). The balance in this proceeding shifts toward maintaining the confidentiality of Petitioner's testing methodologies. First, Petitioner has previously maintained the information as confidential and proprietary. Furthermore, there is little if any public interest in the details of Petitioner's testing methodologies – the public's interest remains in the results from those testing methodologies, which were previously publicly filed. Finally, the detailed information Petitioner seeks to seal is also not required by the Board to make any determination in this proceeding. Accordingly, the public interest will not be harmed by filing the information under seal.

TABLE 2

Paper No. / Exhibit No.	Title	Portions with Redacted Information
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