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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ALTAIRE PHARMACEUTICALS, INC.,  
Petitioner,

v.

PARAGON BIOTECK, INC.,  
Patent Owner

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Case: PGR2015-00011  
Patent No. 8,859,623

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**PATENT OWNER'S MOTION TO SEAL AND MOTION FOR ENTRY OF  
PROTECTIVE ORDER PURSUANT TO 37. C.F.R. § 42.14 AND § 42.54**

## **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 Ex. 2004 filed concurrently herewith Paragon’s Preliminary Response to Altaire Pharmaceuticals, Inc.’s (“Altaire” or “Petitioner”) Petition for Post-Grant Review of U.S. Patent No. 8,859,623 (the “ ’623 Patent”). As detailed below, Ex. 2004 - “PROTECTIVE ORDER MATERIAL - Paragon’s Response to Defendants’ Motion to Dismiss or for Transfer of Venue” contains highly confidential and extremely sensitive information related to financial matters concerning Paragon’s business that Paragon has not and would not make publicly available.

Pursuant to 37 C.F.R. § 42.54, Paragon respectfully moves for entry of the Default Protective Order set forth in the Office Patent Trial Practice Guide (Ex. 2012) submitted herewith Patent Owner’s Motion to Seal and Motion for Entry of Default Protective Order. *The Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48771 (Aug. 14, 2012). Paragon submits Ex. 2012 concurrently herewith Patent Owner’s Preliminary Response to Altaire Pharmaceuticals, Inc.’s Petition for Post-Grant Review of the ’623 Patent.

## **II. GOOD CAUSE EXISTS FOR SEALING CONFIDENTIAL INFORMATION**

By default, 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” in deciding whether 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 balance in this proceeding shifts towards maintaining confidentiality of Paragon’s financial information. This information has nothing to do with the patentability of the ’623 patent claims and rather involves Sawaya Aquebogue LLC’s (“Sawaya Aquebogue”) status as an unnamed real party-in-interest to this post grant review. For at least this reason, the public’s interest in access to Ex. 2004 is significantly lessened. *Garmin*, at 8-9 (PTAB).

As described below, Paragon is submitting highly confidential financial information that is not publicly available. Disclosure of this information would significantly harm Paragon by, (1) violating a May 30, 2011 Agreement (“the Agreement”) between Paragon and Altaire and, (2) jeopardizing Paragon’s competitive position in the marketplace.

First, pursuant to the Agreement, “[t]he parties further acknowledge and agree 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.” (emphasis added). *See* Ex. 2001 at 9.<sup>1</sup> Confidential Ex. 2004 is a document that reveals financial data and business information relating to Paragon and Altaire. Filing Confidential Ex. 2004 under seal is required by the terms of the Agreement.

Second, disclosure of the highly confidential information allows a direct competitor, a current investor or potential investor, to access some of Paragon’s sensitive financial data regarding business strategy. Access to such sensitive financial information may allow a direct competitor an advantage over Paragon and/or impact negotiations between Paragon and current or potential investors. Filing Confidential Ex. 2004 under seal prevents Paragon from jeopardizing its competitive position in the marketplace in order to support arguments that Sawaya Aquebogue is a real party-in-interest in this proceeding and should have been named in the petition.

Paragon redacted only the specific information that it considers confidential financial information, none of which is relied upon by Paragon to support arguments made in Patent Owner’s Preliminary Response. *See* Table 1 *infra*. The Board has previously maintained financial information under seal when the moving party proposed reasonable redactions such that the thrust of the argument

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<sup>1</sup> Ex. 2001 is a copy of Assad Sawaya’s Declaration filed in the United States District Court For the District of Oregon on March 23, 2015. A copy of a redacted version of the Agreement was also included. *See* Ex. 2001 at 6-10.

or evidence can be reasonably understood from the redacted versions. *Greene's Energy Grp., LLC, Inc. v. Oil States Energy Svs., LLC*, IPR2014-00216, Paper 27 at pg. 5 (Sept. 23, 2014). None of Paragon's arguments in Patent Owner's Preliminary Response rely on any of the aforementioned redacted information. As such, there is little legitimate public interest favoring the disclosure of Paragon's highly confidential financial information. Accordingly, the public interest will not be harmed by entry of the attached Default Protective Order or by filing the Confidential Ex. 2004 under seal as "PROTECTIVE ORDER MATERIAL."

**TABLE 1 – PROPOSED SEALED PAPERS AND EXHIBITS**  
**CONFIDENTIAL MATERIALS TO BE SEALED UNDER THE**  
**DEFAULT PROTECTIVE ORDER**

<b>Exhibit No.</b>	<b>Exhibit Title</b>	<b>Portions With Confidential Information</b>
2004	PROTECTIVE ORDER MATERIAL - Paragon's Response to Defendants' Motion to Dismiss or for Transfer of Venue	Pg. 6, lns. 7-12 Pg. 10, lns. 9-10 Pg. 11, lns. 13-27 Pg. 12, lns. 1-6 Pg. 14, lns. 22-24 Pg. 21, lns. 6-9;19-22 Pg. 22, lns. 8-10

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