
**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

CANFIELD SCIENTIFIC, INC.,
Petitioner

v.

MELANOSCAN LLC,
Patent Owner

Case No. IPR2017-02125

Patent No.: 7,359,748

DECLARATION OF RHETT DRUGGE, M.D.

I, Rhett Drugge, M.D., hereby declare as follows:

1. I am over the age of twenty one (21) and am competent to make this Declaration.
2. I make this Declaration in support of the Revised Motion to Seal filed by Patent Owner Melanoscan LLC (“Melanoscan”).
3. I am the sole member of Melanoscan. I am also a practicing physician that uses Melanoscan’s technology, products and devices to examine, diagnose and

treat patients, and also conduct research and development using the technology, products and devices.

4. Good cause exists for the Board to seal the following portions of the record, which can be grouped into five categories of Melanoscan's trade secret information and one entry of personal medical information as shown below:

Table 1

<u>Category of Information</u>	<u>Portion of Record to Be Sealed</u>
Financial information relating to Melanoscan's business	Ex. 1039, Drugge Dep. P. 22, Ln. 6 (first sentence); and Ex. 1039, Drugge Dep. P. 178, Ln. 17 (beginning with "I believe") to P. 178, Ln. 19.
Melanoscan's marketing and sales information, including customer information and financial information relating to its sales and business transactions	Paper No. 33, Footnote 5, P. 14, Ln. 5 to P. 14, Ln. 6 (ending with "one"); Ex. 1039, Drugge Dep. P. 179, Ln. 12 to P. 179, Ln. 20; Ex. 1039, Drugge Dep. P. 180, Ln. 19 to P. 181, Ln. 15; Ex. 1039, Drugge Dep. P. 181, Ln. 25 to P. 182, Ln. 1; and Ex. 1039, Drugge Dep. P. 183, Ln. 1 to P. 183, Ln. 6.
Melanoscan's confidential business practices, including	Paper No. 33, Footnote 5, P. 14, Ln. 8 to P. 14, Ln. 9 (ending with "the"); Paper No. 33, P. 19, Ln. 16 to P. 14, Ln. 17 (ending with "103.");

<u>Category of Information</u>	<u>Portion of Record to Be Sealed</u>
practices involving the use of its commercial products and research devices to examine, diagnose and treat patients	<p>Paper No. 42, P. 3, Ln. 15 to P. 3, Ln. 16 (ending with “measure.”);</p> <p>Paper No. 46, P. 19, Ln. 13 to P. 19, Ln. 16 (ending with “Hurley.”);</p> <p>Ex. 1039, Drugge Dep. P. 64, Ln. 17 to P. 64, Ln. 23;</p> <p>Ex. 1039, Drugge Dep. P. 68, Ln. 20 (beginning with “And”) to P. 68, Ln. 24;</p> <p>Ex. 1039, Drugge Dep. P. 69, Ln. 2 (beginning with “But”) to P. 69, Ln. 10;</p> <p>Ex. 1039, Drugge Dep. P. 69, Ln. 12 to P. 69, Ln. 14;</p> <p>Ex. 1039, Drugge Dep. P. 69, Ln. 16 to P. 69, Ln. 17;</p> <p>Ex. 1039, Drugge Dep. P. 69, Ln. 19 (beginning with “the”) to P. 69, Ln. 22;</p> <p>Ex. 1039, Drugge Dep. P. 69, Ln. 24 to P. 70, Ln. 1;</p> <p>Ex. 1039, Drugge Dep. P. 70, Ln. 4 to P. 70, Ln. 6;</p> <p>Ex. 1039, Drugge Dep. P. 71, Ln. 25 to P. 72, Ln. 1;</p> <p>Ex. 1039, Drugge Dep. P. 73, Ln. 9 to P. 74, Ln. 4;</p> <p>Ex. 1039, Drugge Dep. P. 74, Ln. 8 to P. 74, Ln. 8;</p> <p>Ex. 1039, Drugge Dep. P. 74, Ln. 10 to P. 74, Ln. 17 (ending with “event occurs,”);</p> <p>Ex. 1039, Drugge Dep. P. 75, Ln. 10 to P. 75, Ln. 11;</p> <p>Ex. 1039, Drugge Dep. P. 75, Ln. 23 (beginning with “which”) to P. 76, Ln. 2;</p> <p>Ex. 1039, Drugge Dep. P. 102, Ln. 7 to P. 102, Ln. 10;</p> <p>Ex. 1039, Drugge Dep. P. 102, Ln. 12 to P. 102, Ln. 18;</p>

<u>Category of Information</u>	<u>Portion of Record to Be Sealed</u>
	<p>Ex. 1039, Drugge Dep. P. 104, Ln. 22 to P. 104, Ln. 22;</p> <p>Ex. 1039, Drugge Dep. P. 104, Ln. 25 to P. 105, Ln. 2 (ending with “at”);</p> <p>Ex. 1039, Drugge Dep. P. 105, Ln. 20 (beginning with “And”) to P. 105, Ln. 25;</p> <p>Ex. 1039, Drugge Dep. P. 106, Ln. 6 to P. 106, Ln. 7;</p> <p>Ex. 1039, Drugge Dep. P. 106, Ln. 9 to P. 106, Ln. 9;</p> <p>Ex. 1039, Drugge Dep. P. 106, Ln. 15 to P. 106, Ln. 16;</p> <p>Ex. 1039, Drugge Dep. P. 106, Ln. 18 to P. 106, Ln. 20;</p> <p>Ex. 1039, Drugge Dep. P. 106, Ln. 25 to P. 107, Ln. 1;</p> <p>Ex. 1039, Drugge Dep. P. 107, Ln. 2 (beginning with “you”) to P. 107, Ln. 4;</p> <p>Ex. 1039, Drugge Dep. P. 107, Ln. 6 to P. 107, Ln. 8;</p> <p>Ex. 1039, Drugge Dep. P. 107, Ln. 12 (beginning with “one”) to P. 107, Ln. 16;</p> <p>Ex. 1039, Drugge Dep. P. 107, Ln. 18 (beginning with “what”) to P. 107, Ln. 23;</p> <p>Ex. 1039, Drugge Dep. P. 109, Ln. 17 to P. 109, Ln. 24;</p> <p>Ex. 1039, Drugge Dep. P. 112, Ln. 19 (beginning with “So”) to P. 112, Ln. 24;</p> <p>Ex. 1039, Drugge Dep. P. 113, Ln. 1 to P. 113, Ln. 1;</p> <p>Ex. 1039, Drugge Dep. P. 113, Ln. 4 to P. 113, Ln. 8;</p> <p>Ex. 1039, Drugge Dep. P. 115, Ln. 1 (beginning with “So”) to P. 115, Ln. 9;</p>

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	<p>Ex. 1039, Drugge Dep. P. 115, Ln. 11 to P. 115, Ln. 11;</p> <p>Ex. 1039, Drugge Dep. P. 115, Ln. 14 (beginning with “the” to P. 115, Ln. 15 (ending with “nose”);</p> <p>Ex. 1039, Drugge Dep. P. 115, Ln. 20 (beginning with “So”) to P. 115, Ln. 25;</p> <p>Ex. 1039, Drugge Dep. P. 116, Ln. 4 to P. 116, Ln. 4;</p> <p>Ex. 1039, Drugge Dep. P. 116, Ln. 6 to P. 116, Ln. 7;</p> <p>Ex. 1039, Drugge Dep. P. 116, Ln. 9 to P. 116, Ln. 11;</p> <p>Ex. 1039, Drugge Dep. P. 116, Ln. 13 to P. 116, Ln. 17;</p> <p>Ex. 1039, Drugge Dep. P. 116, Ln. 19 to P. 116, Ln. 20;</p> <p>Ex. 1039, Drugge Dep. P. 116, Ln. 22 to P. 116, Ln. 22;</p> <p>Ex. 1039, Drugge Dep. P. 116, Ln. 24 to P. 117, Ln. 10;</p> <p>Ex. 1039, Drugge Dep. P. 117, Ln. 13 to P. 117, Ln. 15;</p> <p>Ex. 1039, Third Declaration of Jan-Peter Muller, P. 55, Line 1 (beginning with the word after “requires”) to P. 55, Line 2 (ending with “setup”); and</p> <p>Ex. 1039, Third Declaration of Jan-Peter Muller, P. 55, Line 2 (beginning with “when”) to P. 55, Line 2 (ending with the word before “Ex.”).</p>
<p>Details of operation, processes and functioning of Melanoscan’s commercial products and</p>	<p>Paper No. 46, P. 10, Ln. 3 to P. 10, Ln. 6 (ending with “zone.”);</p> <p>Ex. 1039, Drugge Dep. P. 57, Ln. 20 (beginning with “in”) to P. 57, Ln. 23 (ending with “swoop”);</p> <p>Ex. 1039, Drugge Dep. P. 58, Ln. 4 to P. 58, Ln. 10;</p> <p>Ex. 1039, Drugge Dep. P. 60, Ln. 20 to P. 60, Ln. 21;</p>

<u>Category of Information</u>	<u>Portion of Record to Be Sealed</u>
research devices	<p>Ex. 1039, Drugge Dep. P. 61, Ln. 2 to P. 61, Ln. 2;</p> <p>Ex. 1039, Drugge Dep. P. 61, Ln. 9 (beginning with “that”) to P. 61, Ln. 10;</p> <p>Ex. 1039, Drugge Dep. P. 61, Ln. 14 to P. 61, Ln. 15;</p> <p>Ex. 1039, Drugge Dep. P. 61, Ln. 18 to P. 61, Ln. 18;</p> <p>Ex. 1039, Drugge Dep. P. 61, Ln. 22 (beginning with “to”) to P. 61, Ln. 24;</p> <p>Ex. 1039, Drugge Dep. P. 62, Ln. 6 (beginning with “These”) to P. 62, Ln. 8;</p> <p>Ex. 1039, Drugge Dep. P. 62, Ln. 24 to P. 63, Ln. 12;</p> <p>Ex. 1039, Drugge Dep. P. 81, Ln. 19 to P. 82, Ln. 1;</p> <p>Ex. 1039, Drugge Dep. P. 83, Ln. 24 (beginning with “Our”) to P. 83, Ln. 25;</p> <p>Ex. 1039, Drugge Dep. P. 84, Ln. 5 to P. 84, Ln. 9;</p> <p>Ex. 1039, Drugge Dep. P. 84, Ln. 11 to P. 84, Ln. 13;</p> <p>Ex. 1039, Drugge Dep. P. 137, Ln. 15 (beginning with “We”) to P. 137, Ln. 17 (ending with “information”);</p> <p>Ex. 1039, Drugge Dep. P. 185, Ln. 9 to P. 185, Ln. 17;</p> <p>Ex. 1039, Drugge Dep. P. 196, Ln. 15 (beginning with “an”) to P. 196, Ln. 17;</p> <p>Ex. 1039, Drugge Dep. P. 196, Ln. 19 to P. 196, Ln. 20;</p> <p>Ex. 1039, Drugge Dep. P. 197, Ln. 7 (beginning with “is”) to P. 197, Ln. 8;</p> <p>Ex. 1039, Drugge Dep. P. 197, Ln. 20 to P. 197, Ln. 25 (ending with</p>

<u>Category of Information</u>	<u>Portion of Record to Be Sealed</u>
	<p>“can”);</p> <p>Ex. 1039, Drugge Dep. P. 198, Ln. 7 to P. 198, Ln. 9;</p> <p>Ex. 1039, Drugge Dep. P. 198, Ln. 15 to P. 198, Ln. 16;</p> <p>Ex. 1039, Drugge Dep. P. 198, Ln. 18 to P. 198, Ln. 23;</p> <p>Ex. 1039, Drugge Dep. P. 198, Ln. 25 to P. 199, Ln. 4;</p> <p>Ex. 1039, Drugge Dep. P. 199, Ln. 6 to P. 199, Ln. 12;</p> <p>Ex. 1039, Drugge Dep. P. 199, Ln. 19 (beginning with “our”) to P. 199, Ln. 20;</p> <p>Ex. 1039, Drugge Dep. P. 200, Ln. 10 to P. 200, Ln. 11 (ending with “imaging”);</p> <p>Ex. 1039, Drugge Dep. P. 201, Ln. 2 to P. 201, Ln. 6;</p> <p>Ex. 1039, Drugge Dep. P. 202, Ln. 5 to P. 202, Ln. 9; and</p> <p>Ex. 1039, Third Declaration of Jan-Peter Muller, P. 31, Ln. 3 (beginning with “person”) to P. 31, Ln. 5 (ending with “firing”).</p>
Confidential procedures, protocols, data and results of research and development conducted by Melanoscan	<p>Paper No. 49, P. 7, Ln. 12 to P. 7, Ln. 13 (ending with “average”);</p> <p>Paper No. 49, P. 7, Ln. 14 to P. 7, Ln. 15 (ending with “rates”);</p> <p>Ex. 1039, Drugge Dep. P. 99, Ln. 18 (beginning with “It’s”) to P. 99, Ln. 24;</p> <p>Ex. 1039, Drugge Dep. P. 100, Ln. 11 (beginning with “We’ve”) to P. 100, Ln. 13;</p> <p>Ex. 1039, Drugge Dep. P. 100, Ln. 15 (beginning with “we”) to P. 100, Ln. 17 (ending with “numbers”);</p> <p>Ex. 1039, Drugge Dep. P. 100, Ln. 20 (beginning with “excluding”) to P. 100, Ln. 21 (ending with “change”);</p>

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	<p>Ex. 1039, Drugge Dep. P. 103, Ln. 20 to P. 103, Ln. 24;</p> <p>Ex. 1039, Drugge Dep. P. 139, Ln. 13 to P. 139, Ln. 17;</p> <p>Ex. 1039, Drugge Dep. P. 139, Ln. 21 (beginning with “We”) to P. 139, Ln. 22;</p> <p>Ex. 1039, Drugge Dep. P. 152, Ln. 18 to P. 153, Ln. 25;</p> <p>Ex. 1039, Drugge Dep. P. 172, Ln. 24 to P. 173, Ln. 3;</p> <p>Ex. 1039, Drugge Dep. P. 182, Ln. 7 to P. 182, Ln. 25;</p> <p>Ex. 1039, Drugge Dep. P. 183, Ln. 13 to P. 183, Ln. 17;</p> <p>Ex. 1039, Drugge Dep. P. 183, Ln. 20 to P. 183, Ln. 21;</p> <p>Ex. 1039, Drugge Dep. P. 185, Ln. 9 to P. 185, Ln. 17; and</p> <p>Ex. 1039, Drugge Dep. P. 201, Ln. 2 to P. 201, Ln. 6;</p>
Personal medical information	Ex. 1039, Drugge Dep. P. 152, Ln. 18 to P. 153, Ln. 25.

5. I have reviewed the foregoing portions of the record. Based on my position with Melanoscan and my activities as a physician and researcher discussed above, I have personal knowledge as to the matters I attest to. There is good cause to seal these items of information.

6. The first category of information to be sealed is financial information relating to Melanoscan’s business. This information consists of trade secrets belonging to Melanoscan. It is truly confidential, and is not generally known to or

readily ascertainable by the public. Melanoscan does not publically disclose this information and undertakes reasonable efforts to maintain its secrecy, such as using password protected computers and only disseminating the information when necessary and only after receiving enforceable assurances of confidentiality.

7. The financial information relating to Melanoscan's business that it seeks to seal derives independent economic value from not being generally known to or readily ascertainable by others who can obtain economic value from the disclosure or use of the information. Competitors and those with whom Melanoscan conducts business would be able to use this information to harm Melanoscan either competitively or by putting it in an unfair bargaining position armed with such information. Thus, Melanoscan would suffer a concrete harm by public disclosure of this information.

8. The second category of information to be sealed is Melanoscan's marketing and sales information, including customer information and financial information relating to its sales and business transactions. This information consists of trade secrets belonging to Melanoscan. It is truly confidential, and is not generally known to or readily ascertainable by the public. Melanoscan does not publically disclose this information and undertakes reasonable efforts to maintain its secrecy, such as using password protected computers and only disseminating

the information when necessary and only after receiving enforceable assurances of confidentiality.

9. Melanoscan's marketing and sales information that it seeks to seal derives independent economic value from not being generally known to or readily ascertainable by others who can obtain economic value from the disclosure or use of the information. Competitors and those with whom Melanoscan conducts business would be able to use this information to harm Melanoscan either competitively or by putting it in an unfair bargaining position armed with such information. Thus, Melanoscan would suffer a concrete harm by public disclosure of this information.

10. The third category of information to be sealed is Melanoscan's confidential business practices, including practices involving the use of its commercial products and research devices to examine, diagnose and treat patients. This information consists of trade secrets belonging to Melanoscan. It is truly confidential, and is not generally known to or readily ascertainable by the public. Melanoscan does not publically disclose this information and undertakes reasonable efforts to maintain its secrecy, such as using password protected computers and only disseminating the information when necessary and only after receiving enforceable assurances of confidentiality. Melanoscan also ensures that it uses its machines to examine and treat patients in such a way that its confidential

business practices do not become publically known. These business practices are not disclosed or discernible to patients being examined or treated.

11. Melanoscan's confidential business practices that it seeks to seal derive independent economic value from not being generally known to or readily ascertainable by others who can obtain economic value from the disclosure or use of the information. Competitors would be able to use this information to harm Melanoscan competitively by employing these business practices in their own businesses to eliminate or reduce competitive advantages Melanoscan has over competitors or gain an unfair competitive advantage. Thus, Melanoscan would suffer a concrete harm by public disclosure of this information.

12. The fourth category of information to be sealed is details of operation, processes and functioning of Melanoscan's commercial products and research devices. This information consists of trade secrets belonging to Melanoscan. It is truly confidential, and is not generally known to or readily ascertainable by the public. Melanoscan does not publically disclose this information and undertakes reasonable efforts to maintain its secrecy, such as using password protected computers and only disseminating the information when necessary and only after receiving enforceable assurances of confidentiality. The detailed mechanisms of operation of Melanoscan's products are not readily ascertainable and cannot be

readily reverse engineered just by possessing Melanoscan's products. Nor are they discernible to patients being examined or treated.

13. The detailed mechanisms of operation and functionality of the commercial embodiment of Melanoscan's product derive independent economic value from not being generally known to or readily ascertainable by others who can obtain economic value from the disclosure or use of the information. Competitors would be able to use this information to harm Melanoscan competitively by designing their own devices to employ such mechanisms of operation and functionalities without needing to invest in the design of such mechanisms themselves. Competitors would thereby be able to eliminate or reduce competitive advantages Melanoscan has over competitors or gain competitive advantages over Melanoscan.

14. The fifth category of information to be sealed is confidential procedures, protocols, data and results of research and development conducted by Melanoscan. This information consists of trade secrets belonging to Melanoscan. It is truly confidential, and is not generally known to or readily ascertainable by the public. Melanoscan does not publically disclose this information and undertakes reasonable efforts to maintain its secrecy, such as using password protected computers and only disseminating the information when necessary and only after receiving enforceable assurances of confidentiality.

15. The research and development procedures, protocols, data and results that it seeks to seal derive independent economic value from not being generally known to or readily ascertainable by others who can obtain economic value from the disclosure or use of the information. Competitors would be able to use this information to harm Melanoscan competitively by using these research procedures, protocols, data and results to optimize their own research, products and services without needing to invest in the research and development themselves.

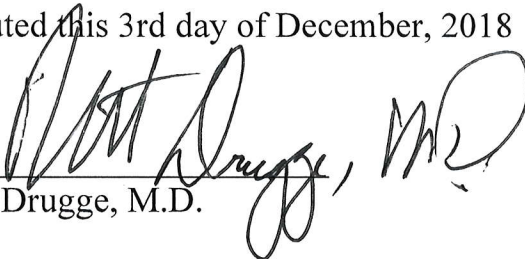
16. The final category of information to be sealed is personal medical information. This information is truly confidential medical information relating to me and people that I know and trust. Neither I nor the people that have entrusted me with their personal information want their medical information to become publically known. We and/or our families would suffer concrete harm and loss of privacy upon disclosure of such medical information.

17. I also understand that to establish good cause to seal the foregoing portions of the record, Melanoscan must also establish that there is a genuine need to rely in the trial on such information and that the interest in maintaining its confidentiality outweighs the public's interests in an open record. I believe that the foregoing portions of the record also meet the good cause standard in these respects. Melanoscan also relies on the analysis of its attorneys with respect to these two factors of the good cause standard.

18. I respectfully ask that the Board seal the portions of the record identified in Table 1, above. Melanoscan did not commence this proceeding, and it only produced this information to the Canfield to comply with Canfield's discovery demands after Canfield promised to maintain its confidentiality by signing the Proposed Protective Order.

I hereby declare that all statements made herein of my own knowledge are based on my knowledge and are true, and that all statements made on information and belief are based on my information and believe and are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed this 3rd day of December, 2018


Rhett Drugge, M.D.