

PATENTS ACT 1977

APPLICANT Neo-Inhalation Products Limited

ISSUE Whether a document filed on GB 0812854.8 should
 be accorded confidential status under Rule 53

HEARING OFFICER MRS S E CHALMERS

DECISION**Background**

- 1 In an email dated 14 February 2013, the applicant's agent requested confidentiality under Rule 53 in respect of the report marked CONFIDENTIAL attached to the letter dated 31 January 2013. The reason given was that the report "is a private clinical study commissioned by, and paid for, by the applicant. It thus contains very valuable, and commercially sensitive, information."
- 2 An official letter dated 28 February 2013 informed the applicant that the Office was minded to refuse the request. It was noted that the document in question was filed as evidence to rebut an inventive step objection and that the agent had advanced no argument as to why putting this document into the public domain would be harmful to the applicant. The applicant was invited to file further observations or request a hearing by 14 March 2013 and advised that if there was no reply, the Hearing Officer would proceed to issue a firm decision on the matter. No observations were received and the proprietor has not asked to be heard.

Decision

- 3 The criteria to be applied in considering requests for confidentiality are set out in the judgment of the Patents Court in *Diamond Shamrock Technologies S.A.'s Patent* [1987] RPC 91 – see in particular page 93, lines 28-34:

"I think it is desirable if a request of this kind is made that a rather more exact indication should be given as to the reasons why in truth the document ought not to be disclosed because it is easy enough to talk about the material being of commercial interest and talk about it being sensitive. That fact in itself does not necessarily mean that the material, which would otherwise become public property because it was included in the documents which are going to be open to public inspection, is to be excluded from public inspection."

- 4 Since the public are generally entitled to inspect documents relating to a patent or, after publication of an application, to the application, I take from this judgment that a request for confidentiality should not be granted unless it is considered justified for the reasons given. It is a matter of judging whether a party's reasons for desiring confidentiality outweigh the generally overriding public interest for disclosure in each case. The fact that a document is said to contain "sensitive commercial information" does not necessarily mean that this material, which would otherwise become public property, is to be excluded from public inspection; apart from generalities there must be some real indication as to why disclosure would be harmful.
- 5 Given that the document was filed as evidence to rebut an official objection of lack of inventive step and in the absence of any argument from the applicant giving any indication why disclosure would be harmful, I refuse the request for confidentiality under Rule 53. I therefore direct that the document should be made open to public inspection under section 118(1).

Appeal

- 6 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

MRS S E CHALMERS
Deputy Director, acting for the Comptroller