

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC. and AMNEAL
PHARMACEUTICALS LLC,
Petitioner

v.

YEDA RESEARCH & DEVELOPMENT CO. LTD.,
Patent Owner

Case No. IPR2015-00644¹
Patent 8,399,413

PATENT OWNER'S UNOPPOSED MOTION TO PRESERVE THE RECORD
PENDING APPEAL

¹ Case IPR2015-01980 has been joined with this proceeding.

I. INTRODUCTION

Pursuant to the Board's October 5, 2016, Decision Denying Patent Owner's Motion to Expunge (Paper 89), Patent Owner Yeda Research & Development Co., Ltd., ("Patent Owner" or "Yeda") respectfully submits this Motion to Preserve the Record Pending Appeal. This Motion extends to the entire docket in IPR2015-00644, including preservation of all sealed documents in non-public form.²

According to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48756 (Aug. 14, 2012) ("Trial Practice Guide"), confidential information that is subject to a protective order ordinarily would become public 45 days after final judgment in a trial. Trial Practice Guide at 48760-61. A party seeking to maintain the confidentiality of information may file a motion to expunge the information from the record prior to the information becoming public. *Id.*; 37 C.F.R. § 42.56.

The Federal Rules of Appellate Procedure and the Federal Circuit Rules require that the record be retained by the Board pending appeal. Specifically, Federal Circuit Rule 17(a) states that "[t]he agency must retain the record." Federal Circuit Rule 17(d), titled "Access of Parties and Counsel to Original

² The following exhibits are currently sealed on the docket: Exhibits 2108-2114, 2120-2122, and the Grabowski Declaration (Exhibit 2133) ("the Confidential Exhibits"). These exhibits contain confidential information of a third party, IMS Health Inc. ("IMS Health").

Record” also requires that the parties and their counsel have access to both the sealed and unsealed portions of the record “[w]hen a petition for review or notice of appeal is filed.” The deadline for filing a notice of appeal in this case is February 3, 2017. Patent Owner intends to file a notice of appeal. If the record is not preserved in its entirety including any sealed portions, the Federal Circuit Court of Appeals may not be able to fully consider the issues discussed in the Final Written Decision, which would cause prejudice to the parties in this IPR.

In this case, Patent Owner filed a Motion to Expunge Confidential Information on September 23, 2016. Also on September 23, 2016, Patent Owner filed a Request for Rehearing of the Final Written Decision. On October 5, 2016, the Board issued its Decision Denying Patent Owner’s Motion to Expunge (Paper 89), and authorizing Patent Owner’s instant Motion to Preserve the Record Pending Appeal following a decision on Patent Owner’s Request for Rehearing.

On December 2, 2016, the Board issued a Decision Granting-in-Part Patent Owner’s Request for Rehearing (Paper 90), and also issued a modified Final Written Decision (Paper 91).

Absent the present Motion to Preserve the Record Pending Appeal, the docket in this case would become public on January 16, 2017. This motion, filed in advance of that date, is timely.

Petitioners have informed Patent Owner that they do not oppose this motion.

V. CONCLUSION

For the reasons stated above, Patent Owner respectfully requests that the Board preserve the record of this IPR in its entirety, pending completion of any appeal to the Federal Circuit Court of Appeals.

Dated: January 13, 2017

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PATENT OWNER'S UNOPPOSED MOTION TO PRESERVE THE RECORD PENDING APPEAL was served electronically via e-mail on January 13, 2017, on the following:

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Dated: January 13, 2017

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