

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INNOPHARMA LICENSING, INC., INNOPHARMA LICENSING LLC,
INNOPHARMA INC., INNOPHARMA LLC,
MYLAN PHARMACEUTICALS INC., and MYLAN INC.,
Petitioners,

v.

SENJU PHARMACEUTICAL CO., LTD.
Patent Owner.

Case IPR2015-00902 (Patent 8,669,290 B2)

PATENT OWNER'S MOTION TO SEAL

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I. Introduction

Through this Motion to Seal, Patent Owner requests that third party confidential documents related to certain preservative efficacy testing (EX2249 through EX2263) be sealed. Under 37 C.F.R. § 42.54, Patent Owner renews its request for entry of the Proposed Stipulated Protective Order, Paper 36, filed on December 28, 2015. To the best of Patent Owner's knowledge, the Patent Owner certifies that the information identified as confidential in this motion has not been published or otherwise made public. Petitioner does not oppose this motion to seal.

II. Governing Rules and PTAB Guidance

Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public but a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion.

Similarly, 37 C.F.R. § 42.14 provides:

The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7)(“The Director shall prescribe regulations -- . . . providing for protective orders governing the exchange and submission of confidential information”). In that regard, the *Office Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012) provides:

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.

* * *

Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.
§ 42.54.

The standard for granting a motion to seal is “for good cause,” 37 C.F.R. § 42.54, and the moving party has the burden of proof in showing entitlement to the requested relief, 37 C.F.R. § 42.20(c).

A motion to seal is also required to include a proposed protective order and a certification that the moving party has in good faith conferred or attempted to

confer with the opposing party in an effort to come to an agreement as to the scope of the proposed protective order for this *inter partes* review. 37 C.F.R. § 42.54.

III. Good Cause Exists for Sealing Exhibits 2249 to 2263 Containing Third-Party Confidential Information

Patent Owner requests that its confidential materials of third parties BioScience and SSCI (Exs. 2249 through 2263) be sealed under 37 C.F.R. § 42.14. As explained herein, good cause exists for sealing this information. These documents contain third party BioScience's and SSCI's proprietary information related to each company's proprietary testing methods. Patent Owner's expert Dr. Paulson was questioned about these exhibits during his cross-examination.

The Board's rules provide for the protection of trade secret or other confidential commercial information. *See* 77 Fed. Reg. at 48,760. Here, the public's interest in the instant proceeding does not outweigh a third party's interest in protecting this limited sensitive business information.

Because public disclosure of the contents of these documents, or descriptions of those contents, would disclose confidential business methods of a third party, Patent Owner requests that Exs. 2249 through 2263 be sealed, as "PROTECTIVE ORDER MATERIAL", for the duration of this proceeding.

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