

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.,

Petitioner,

v.

SENJU PHARMACEUTICAL CO., LTD., BAUSCH & LOMB, INC., and
BAUSCH & LOMB PHARMA HOLDINGS CORP.,

Patent Owner.

Case IPR2015-00902
Patent 8,669,290 B2

Before FRANCISCO C. PRATS, ERICA A. FRANKLIN, and
GRACE KARAFFA OBERMANN, *Administrative Patent Judge*.

FRANKLIN, *Administrative Patent Judge*.

DECISION

*Denying Petitioner's Motion to Seal Exhibits 1049, 1067, 1079, 1081–1083,
1104, 1117, 1134, 1140, 1150, 1152, and Petitioner's Reply
37 C.F.R. § 42.14*

I. INTRODUCTION

Petitioner filed a Motion to Seal portions of a number of depositions transcripts (Exs. 1049, 1079, and 1081), a portion of the Petitioner’s Reply to the Patent Owner’s Response, and the entirety of Exhibits 1067, 1117, 1134, 1140, and 1152. Paper 55 (“Mot.”).

For the reasons described in the following discussion, we *deny* without prejudice Petitioner’s Motion to Seal Exhibits 1049, 1067, 1079, 1081–1083, 1104, 1117, 1134, 1140, 1150, 1152, and Petitioner’s Reply.

II. DISCUSSION

“There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in an issued patent and therefore affects the rights of the public.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). A motion to seal may be granted for good cause. 37 C.F.R. § 42.54. The moving party bears the burden of showing that there is good cause for the relief requested, including why the information is appropriate to be filed under seal. 37 C.F.R. §§ 42.20, 42.54. The Office Patent Trial Practice Guide notes that 37 C.F.R. § 42.54 identifies 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. 77 Fed. Reg. at 48,760. Until a motion to seal is decided, documents filed with the motion shall be sealed provisionally. 37 C.F.R. § 42.14.

Petitioner’s Motion to Seal is deficient in a number of ways. None of the Exhibits are properly described. Indeed, the five exhibits that Petitioner

seeks to seal in their entirety are not characterized even by title. *See* Mot. 3. Moreover, Petitioner failed to provide what portions of Exhibits 1104 and 1150, and what portion of the Petitioner’s Reply to Patent Owner’s Response (or the relevant paper number(s)) it seeks to seal. *Id.* Further, Petitioner states that they “make no assertion whether or not [the materials that they seek to seal] contain confidential information.” *Id.* at 4. Instead, Petitioner asserts that Patent Owner has requested Petitioner to file the documents under seal and to “file an appropriate motion to seal” *Id.* Petitioner has not done so. As the moving party, Petitioners have failed their burden of showing that there is good cause for the relief requested. *See* 37 C.F.R. §§ 42.20, 42.54.

Moreover, a protective order has not been entered in the captioned proceedings and an acceptable proposed protective order has not been filed.

For the foregoing reasons, Petitioner’s Motion to Seal Exhibits 1049, 1067, 1079, 1081–1083, 1104, 1117, 1134, 1140, 1150, 1152, and Petitioner’s Reply is *denied* without prejudice. We exercise our discretion to maintain those materials under a provisional seal, in the manner filed, through July 31, 2016, to allow time for a party to file a motion to seal that shows good cause for the relief requested, after a protective order has been entered in this proceeding, and/or to withdraw the provisionally sealed materials.

ORDER

In accordance with the foregoing, it is hereby:

ORDERED that the Petitioner’s Motion to Seal Exhibits 1049, 1067, 1079, 1081–1083, 1104, 1117, 1134, 1140, 1150, 1152, and Petitioner’s Reply is *denied* without prejudice;

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FURTHER ORDERED that Exhibits 1049, 1067, 1079, 1081–1083, 1104, 1117, 1134, 1140, 1150, 1152, and Petitioner’s Reply shall remain provisionally sealed until further notice by the Board;

FURTHER ORDERED a party may file a revised or new motion to seal and/or withdraw the provisionally sealed materials on or before July 31, 2016; and

FURTHER ORDERED that any opposition to a revised or new motion to seal shall be filed within 5 business days after the filing of the motion.

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