

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 Petitioner's Response to Patent
Owner's Observation Regarding Cross-Examination of Reply Witnesses
Dr. Laskar and Mr. Hofmann
37 C.F.R. § 42.14*

I. INTRODUCTION

Petitioner filed a Motion to Seal Petitioner's Response to Patent Owner's Motion for Observation Regarding Cross-Examination of Reply Witnesses Dr. Laskar and Mr. Hofmann ("Petitioner's Response to Observations") (Paper 76). Paper 73 ("Mot.").

For the reasons described in the following discussion, we *deny* without prejudice Petitioner's Motion to Seal.

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 asserts that the Petitioner's Response to Observations (Paper 76) contains or refers to information contained in the cross-examination transcripts of Dr. Paul Laskar (Ex. 2272) and Mr. Ivan

Hofmann (Ex. 2273), that Patent Owner seeks to seal by another motion (*see* Paper 67). Mot. 1.

Petitioner does not indicate whether it seeks to seal portions or the entirety of Petitioner's Response to Observations. Further, Petitioner "makes no assertion whether or not [Exhibits 2272, 2273, and Paper 76] contain confidential information." *Id.* at 2. As the moving party, Petitioner has failed its 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 Petitioner's Response to Observations is *denied* without prejudice. We exercise our discretion to maintain that filing 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 material.

ORDER

In accordance with the foregoing, it is hereby:

ORDERED that Patent Owner's Motion to Seal Petitioner's Response to Patent Owner's Motion for Observation Regarding Cross-Examination of Reply Witnesses Dr. Laskar and Mr. Hofmann (Paper 76) is *denied* without prejudice;

FURTHER ORDERED that Paper 76 shall remain provisionally sealed until further notice by the Board;

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FURTHER ORDERED a party may file a revised or new motion to seal and/or withdraw the provisionally sealed material 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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