

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 Patent Owner's Motion to Seal Exhibits 2249-2263
37 C.F.R. § 42.14

I. INTRODUCTION

Patent Owner filed a Motion to Seal Exhibits 2249-2263 Paper 71 (“Mot.”). Patent Owner asserts that Petitioner does not oppose the motion. *Id.* at 1.

For the reasons described in the following discussion, we *deny* without prejudice Patent Owner’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.

Patent Owner asserts that Exhibits 2249-2263 are “confidential materials of third parties BioScience and SSCI.” Mot. 3. According to Patent Owner, those exhibits “contain third party BioScience’s and SSCI’s proprietary information related to each company’s proprietary testing

methods.” *Id.* Patent Owner asserts that “the public’s interest in the instant proceeding does not outweigh a third party’s interest in protecting this limited sensitive business information.” *Id.* Those assertions are insufficient. In particular, Patent Owner has neither demonstrated that the exhibits contain proprietary information nor established its standing to assert the “interest” of a non-party third party in this proceeding. In a revised motion to seal, if Patent Owner continues to seek to have those materials sealed, those issues should be addressed.

ORDER

In accordance with the foregoing, it is hereby:

ORDERED that Patent Owner’s Motion to Seal Exhibits 2249-2263 is *denied* without prejudice;

FURTHER ORDERED that Exhibits 2249-2263 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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