

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., 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)

Filed: July 29, 2016

**PETITIONER'S MOTION TO SEAL UNDER 37 C.F.R. § 42.54
AND MOTION TO ENTER DEFAULT PROTECTIVE ORDER**

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	GOOD CAUSE EXISTS FOR SEALING CONFIDENTIAL INFORMATION IN EXHIBITS 2109 AND 2082 AND PATENT OWNER'S RESPONSE.....	4
III.	CERTIFICATION OF NON-PUBLICATION	7
IV.	CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37.C.F.R. § 42.54.....	8
V.	PROPOSED DEFAULT PROTECTIVE ORDER.....	8
VI.	CONCLUSION.....	8

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC</i> , IPR2012-00001, Paper No. 37 (PTAB, Apr. 5, 2013)	3
<i>Sandoz, Inc. v. EKR Therapeutics, LLC</i> , IPR2015-00005, Paper No. 21 (PTAB, Apr. 24, 2014)	3

STATUTES

35 U.S.C. § 316(a)(1).....	2
35 U.S.C. § 316(a)(7).....	3

OTHER AUTHORITIES

37 C.F.R. § 42.14	1, 2
37 C.F.R. § 42.20(c).....	3
37 C.F.R. § 42.54	1, 3, 5
Federal Rules of Civil Procedure 26(c)(1)(G)	3
Office Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).....	3

I. INTRODUCTION

In its June 21, 2016, Decision relating to both Case IPR2015-00902 and Case IPR2015-00903, the Patent Trial and Appeal Board (the “Board”) found deficiencies in both the Patent Owner’s Motion to Seal and Stipulated Protective Order. Paper 85. Thus, the Board denied both without prejudice. *Id.* at 8. In its Decision, the Board ordered that the Patent Owner may file the default protective order or an amended protective order and revised motion to seal addressing the identified deficiencies on or before July 31, 2016. *Id.* at 8-9. In a related Decision of the same day, in Case IPR2015-00902, the Board denied without prejudice Petitioner’s Motion to Seal. Paper 86. In that Decision, the Board ordered that a party may file a revised or new motion to seal on or before July 31, 2016. *Id.* at 4.

Accordingly, pursuant to 37 C.F.R. §§ 42.14 and 42.54 InnoPharma Licensing, Inc., InnoPharma Licensing LLC, InnoPharma Inc., InnoPharma LLC (collectively, “InnoPharma”), Mylan Pharmaceuticals Inc., and Mylan Inc. (collectively, “Mylan”) (InnoPharma and Mylan collectively, “Petitioner”) respectfully move to seal Exhibit 2109 in its entirety, and portions of Exhibit 2082 and Patent Owner’s Response (Paper No. 32), which were submitted by Senju Pharmaceutical Co., Ltd., Bausch & Lomb, Inc., and Bausch & Lomb Pharma Holdings Corp. (collectively, “Patent Owner”). Exhibit 2109 contains InnoPharma’s Abbreviated New Drug Application (“ANDA”). Exhibit 2082,

which contains Patent Owner's expert Declaration of Robert O. Williams, III, Ph.D. (the "Williams Declaration"), and Patent Owner's Response cite to or substantially describe the confidential information in Ex. 2109 that Petitioner seeks to seal. Petitioner certifies that the information identified as confidential in this motion has not been published or otherwise made public.

Having noted the deficiencies discussed by the Board in its Decision (Paper 85), Petitioners also respectfully request entry of the Default Protective Order. Patent Owner does not oppose this motion.

II. GOOD CAUSE EXISTS FOR SEALING CONFIDENTIAL INFORMATION IN EXHIBITS 2109 AND 2082 AND PATENT OWNER'S RESPONSE

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, and a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion.

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



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