

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 Judges*.

OBERMANN, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Renewed Motion to Seal (Paper 96)
37 C.F.R. §§ 42.14 and 42.54

In an Order dated June 21, 2016, the Board denied Patent Owner's request to enter a Stipulated Protective Order. Paper 85. That same day, the Board denied without prejudice all pending motions to seal documents. Papers 85–89. Thereafter, on July 28, 2016, the Board entered a Final Written Decision. Paper 90. On July 29, 2016, Patent Owner filed a Renewed Motion to Seal. Paper 96 (“Motion” or “Mot.”). This Order addresses that Motion. Patent Owner states that “Petitioner Lupin” does not oppose the Motion, but that entity is not a party to this proceeding. Mot. 1. Petitioner has not filed an opposition to the Motion.

Concurrently herewith, we enter an Order granting Petitioner's unopposed request for entry of the Default Protective Order (Paper 97, App'x A (copy of Default Protective Order)), which governs the disclosure of confidential information in this proceeding.

New Public Versions of Certain Documents Marked Confidential

Patent Owner does not seek to seal certain portions of documents that were marked confidential and filed provisionally under seal in this proceeding. Mot. 2–3 (identifying documents previously marked as confidential and filed provisionally under seal; namely, portions of Patent Owner's Response (Paper 33), Petitioner's Reply to Patent Owner's Response to Petition (Ex. 2271), Patent Owner's Motion for Observations (Paper 58), and declarations or testimony of Dr. Paul Laskar (Ex. 2114 and Ex. 2272), Ivan Hoffman (Ex. 2273), Robert O. Williams (Ex. 2082), and Stephen G. Davies (Ex. 2105)). Patent Owner states that it will file new public versions of those papers and exhibits without the “PROTECTIVE

ORDER MATERIAL—FED R. EVID 615” marking. *Id.* Patent Owner has completed that action. *See* Papers 94, 96, Ex. 2015, Ex. 2082, Ex. 2114, Ex. 2271, Ex. 2272, Ex. 2273. Most of those documents were the subject of Patent Owner’s prior motion to seal (Paper 36) that was denied without prejudice (Paper 85).

Patent Owner further states that is does not seek to seal certain research and development presentations (Ex. 2220 and Ex. 2226) that were the subject of our prior decision (Paper 85) that denied without prejudice Patent Owner’s prior motion to seal (Paper 36). Mot. 3–4. Patent Owner also indicates that it no longer seeks to seal Exhibits 2255, 2256, or 2257, which in the prior motion to seal (Paper 36) were asserted to reflect confidential information owned by non-party BioScience. Mot. 4. Patent Owner states that a public version of those exhibits will be filed. *Id.* Patent Owner has completed that action. *See* Ex. 2220, Ex. 2226, Ex. 2255, Ex. 2256, Ex. 2257.

No further action is required regarding the above documents.

Granting Request to Seal New Drug Application Exhibits

Patent Owner requests to seal portions of Exhibits 2096, and further, to seal in their entirety Exhibits 2102, 2103, and 2110. Mot. 6. Patent Owner identifies those exhibits as excerpts of Patent Owner’s New Drug Application (“NDA”). We previously denied Patent Owner’s prior motion to seal Exhibit 2096 because Patent Owner sought to seal that document in its entirety without establishing adequately that all of the material reflected therein is confidential. Paper 85, 7. For example, we observed that page 1

of Exhibit 2096 “does not appear to contain any confidential or proprietary information” and directed Patent Owner to address that issue in any later-filed motion to seal Exhibit 2096. *Id.* Patent Owner accompanies its renewed request to seal Exhibit 2096 with a redacted version that addresses adequately the Board’s concerns. Mot. 6; Ex. 2096 (public version).

Based on our review of Exhibits 2102, 2103, and 2110, and Patent Owner’s arguments pertaining to them, we are persuaded that good cause exists to seal those exhibits in their entirety. Mot. 7–9. Petitioner has not opposed sealing Exhibits 2096, 2102, 2103, or 2210 as proposed by Patent Owner. Accordingly, Patent Owner’s request to seal Exhibits 2096, 2102, 2103, and 2110 is *granted*.

Patent Owner seeks to seal other documents alleged to reflect information contained in Exhibits 2096, 2102, 2103, and 2110. Specifically, Patent Owner seeks to seal pages 3, 48, 49, and 51 of Patent Owner’s Response (Paper 34); paragraphs 143, 144, 167, 170, 171, 192, 193, and 194 of the declaration of Dr. Williams (Ex. 2082); paragraphs 16, 41, and 49 of the declaration of Dr. Trattler (Ex. 2116), paragraphs 17, 56, 82, and 134 of the declaration of Dr. Jarosz (Ex. 2130); and pages 25, 26, 34, 35, 37–40, 49, and 53 of the deposition transcript of Mr. Hoffman (Ex. 2273). Mot. 7.

Patent Owner shows sufficiently that those documents “cite or substantially describe the excerpts from the NDA” and, thereby, reveal confidential information. *Id.* Accordingly, Patent Owner’s request to seal those documents is *granted*.

Granting Request to Seal Exhibits of Non-Party BioScience

In addition, Patent Owner requests to seal exhibits alleged to reflect confidential information owned by non-party BioScience; specifically, Exhibits 2249–2263. Mot. 9. Previously, we denied Patent Owner’s prior request to seal those materials because Patent Owner had “neither demonstrated that the exhibits contain proprietary information nor established its standing to assert” any interest of BioScience in this proceeding. Paper 88, 3. The instant Motion, by contrast, is supported by a declaration of Deanna J. Field, Vice President of Finance and Administration of BioScience (Ex. 2279). That declaration establishes adequately BioScience’s interest in shielding from public disclosure certain proprietary testing protocol and standard operating procedures, kept confidential by BioScience, as reflected in Exhibits 2249–2263. Mot. 9; Ex. 2279, 3–11.

Patent Owner shows sufficiently that public disclosure of the information sought to be sealed would cause financial damage to BioScience. Ex. 2279, 10. Patent Owner further shows sufficiently that “BioScience has authorized Patent Owner to request that Exs. 2249–2263 be sealed.” Mot. 9–10 (citing Ex. 2279, 2). Patent Owner submits an appropriately redacted public version of Ex. 2249. Petitioner also shows sufficiently that Exhibits 2250–2263 “contain confidential information on all but one page, thus redaction is not practical.” Mot. 10 (citing Ex. 2279, 3–11). Accordingly, Patent Owner’s request to seal Exhibits 2249–2263 is *granted*.

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