

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)
Case IPR2015-00903 (Patent 8,129,431 B2)¹

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

OBERMANN, *Administrative Patent Judge*.

ORDER

Authorizing Extension of Time for Filing Motion to Expunge
37 C.F.R. §§ 42.5(a); 42.56

¹ IPR2015-01871 has been joined with IPR2015-00903. This Order addresses issues common to both cases identified in the caption.

IPR2015-00902 (Patent 8,669,290 B2)

IPR2015-00903 (Patent 8,129,431 B2)

A Final Written Decision was entered in each proceeding on July 28, 2016. Paper 90.² On September 19, 2016, the Board received an email communication from counsel indicating that neither party received the automated notices from the Board's filing system (PTAB E2E) for all orders entered after the date of entry of the Final Written Decision. A copy of the email correspondence is entered as Exhibit 3001.

Specifically, counsel failed to receive PTAB E2E-generated notices of filing related to the Order granting entry of a protective order, Orders granting motions to seal confidential documents, and the Order unsealing documents. Ex. 3001 (email from counsel, citing Papers 99–102). As a result, neither party was aware that the requested documents had been placed under seal, that those documents could be expunged, and that absent any such motion the documents would be made public. *Id.* Accordingly, the parties jointly request an extension to September 16, 2016, of the time for filing a motion to expunge. *Id.* The parties further jointly request that the Board delay the effective date of its order of September 7, 2016, and keep the parties' confidential documents under seal until the Board considers any motion to expunge. *Id.*

Under the circumstances, the Board *grants* the parties' joint request for an extension of time for filing a motion to expunge to September 21, 2016, subject to the conditions set forth below. In lieu of a motion to expunge, the parties may file a motion to maintain the record as sealed during the pendency of any appeal. Any motion to maintain the record as sealed shall be filed by September 21, 2016.

² For convenience, we refer to papers filed in IPR2015-00902.

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The parties' request to keep confidential documents under seal until the Board considers each party's motion to expunge is *denied-in-part* and *granted-in-part*. Specifically, the parties' request to keep confidential any paper or exhibit cited in the Final Written Decision is *denied*. The parties' request to keep confidential all other documents filed under seal, until the Board considers each party's motion to expunge or motion to maintain the record as sealed during the pendency of any appeal, is *granted*.

By September 21, 2016, the parties are directed to file the Joint Stipulation and Counsel Certification that was ordered in both proceedings (*see, e.g.*, IPR2015-00902, Paper 99; IPR2015-00902, Paper 91). Any motion to expunge should balance the need to maintain the confidentiality of the information against the public's interest in maintaining a complete and understandable record of the patent history, including the factual basis for the Board's findings and the intelligibility of substantive papers that rely on the information sought to be expunged.

No motion to expunge, or motion to maintain the record as sealed during the pendency of any appeal, shall be entertained with respect to any paper or exhibit cited in the Final Written Decision. In that regard, all papers and exhibits identified in the Joint Stipulation shall be unsealed on September 23, 2016. A party may prevent the unsealing of a paper or exhibit identified in the Joint Stipulation by filing, no later than September 21, 2016, a revised public version of the paper or exhibit in which each page or paragraph cited in the Final Written Decision is left unredacted. Material not cited in the Final Written Decision may be redacted in the revised public version.

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It is

ORDERED that the parties' joint request for an extension of time for filing a motion to expunge to September 21, 2016 is *granted* subject to the conditions set forth in this Order;

FURTHER ORDERED that, in lieu of a motion to expunge, by September 21, 2016, any party may file a motion to maintain the record as sealed during the pendency of any appeal;

FURTHER ORDERED that the parties' request to keep confidential documents filed under seal until the Board considers each party's motion to expunge is *denied-in-part* and *granted-in-part*. Specifically, the parties' request to keep confidential any paper or exhibit cited in the Final Written Decision is *denied*. The parties request to keep confidential all other documents filed under seal, until the Board considers each party's motion to expunge or motion to maintain the record as sealed during the pendency of any appeal, is *granted*;

FURTHER ORDERED that the parties shall file the Joint Stipulation and Counsel Certification that was ordered in both proceedings (*see, e.g.*, IPR2015-00902, Paper 99; IPR2015-00902, Paper 91) by September 21, 2016;

FURTHER ORDERED that no motion to expunge, or motion to maintain the record as sealed during the pendency of any appeal, shall be entertained with respect to a paper or exhibit cited in the Final Written Decision;

FURTHER ORDERED that all papers and exhibits identified in the Joint Stipulation shall be unsealed on Friday, September 23, 2016; and

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FURTHER ORDERED that a party may prevent the unsealing of any paper or exhibit identified in the Joint Stipulation by filing, no later than September 21, 2016, a revised public version of the paper or exhibit as set forth in this Order.

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