

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., LUPIN LTD. and
LUPIN PHARMACEUTICALS, INC.,

Petitioners,

v.

SENJU PHARMACEUTICAL CO., LTD., BAUSCH & LOMB, INC., and
BAUSCH & LOMB PHARMA HOLDINGS CORP.,

Patent Owner.

Case IPR2015-00903
Patent 8,129,431 B2

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

FRANKLIN, *Administrative Patent Judge*.

DECISION

*Denying Petitioners' Motion to Seal Petitioners' 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

Petitioners filed a Motion to Seal Petitioners' Response to Patent Owner's Motion for Observation Regarding Cross-Examination of Reply Witnesses Dr. Laskar and Mr. Hofmann ("Petitioners' Response to Observations") (Paper 68). Paper 65 ("Mot.").

For the reasons described in the following discussion, we *deny* without prejudice Petitioners' 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.

Petitioners assert that the Petitioners' Response to Observations 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 61). Mot. 1.

Petitioners do not indicate whether it seeks to seal portions or the entirety of Petitioners' Response to Observations. Further, Petitioners "make[] no assertion whether or not [Exhibits 2272, 2273, and Paper 68] contain confidential information." *Id.* at 2. As the moving party, Petitioners have failed their 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, Petitioners' Motion to Seal Petitioners' 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 Petitioners' Response to Patent Owner's Motion for Observation Regarding Cross-Examination of Reply Witnesses Dr. Laskar and Mr. Hofmann (Paper 68) is *denied* without prejudice;

FURTHER ORDERED that Paper 68 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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