

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 Patent Owner's Motion to Seal Exhibits 2272, 2273, and Patent
Owner's Observation Regarding Cross-Examination of Reply Witnesses*

Dr. Laskar and Mr. Hofmann

37 C.F.R. § 42.14

I. INTRODUCTION

Patent Owner filed a Motion to Seal the depositions transcripts of Dr. Paul Laskar (Ex. 2272) and Mr. Ivan Hofmann (Ex. 2273), and the Patent Owner's Motion for Observation Regarding Cross-Examination of Reply Witnesses Dr. Laskar and Mr. Hofmann ("Patent Owner's Observations") (Paper 58). Paper 61 ("Mot."). Patent Owner asserts that Petitioners do 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, in his deposition testimony, Mr. Hofmann discloses Patent Owner's highly sensitive, confidential, technical information relating to Patent Owner's New Drug Application filed confidentially with the Food and Drug Administration. Mot. 5–6. According to Patent Owner that information has not been made public. *Id.* at 6. Patent Owner asserts that public disclosure of those portions of the deposition transcript describing that information would result in the disclosure of Patent Owner's confidential business terms in a highly competitive market. *Id.* Therefore, Patent Owner requests that the following portions of Exhibit 2273 be sealed as “PROTECTIVE ORDER MATERIAL – BOARD’S EYES ONLY”: 24:21–25:4; 33:8–9; 33:19–21; 34:3–4; 36:2–3; 37:6; 37:22–38:1; 38:3–4; 38:19–20; 39:13–14; 48:21–22; 52:11–12. *Id.* at 5–7.

Additionally, Patent Owner requests that the deposition transcripts of Dr. Laskar (Ex. 2272) and Mr. Hofmann (Ex. 2273), and Patent Owner's Observations relating to the cross-examinations of those deponents be sealed in their entirety under Federal Rule of Evidence 615 (“FRE 615”) as “PROTECTIVE ORDER MATERIAL–FED R. EVID 615” “until such time as the cross examination of Petitioner Lupin's expert Dr. [Jayne] Lawrence in connection with Lupin's petition in the Related IPR Proceedings, as well as any other reply witness offered by Lupin, has concluded.” Mot. 7–8.

Although Patent Owner have established that portions of Exhibit 2273 contain confidential information, a protective order has not been entered in the captioned proceedings and an adequate proposed protective order describing a category of confidential information to be designated as “PROTECTIVE ORDER MATERIAL – BOARD’S EYES ONLY” has not been filed. Patent Owner's request to seal the entirety of Exhibits 2272 and

2273, and Paper 58 under FRE 615 appears to be moot at this stage in the proceeding, as discovery has concluded. Accordingly, Patent Owner's Motion to Seal is *denied* without prejudice. Under the circumstances, we exercise our discretion to maintain Exhibits 2272 and 2273, and Paper 64 under a provisional seal, in the manners requested, through July 31, 2016, to allow time for the parties to file a renewed motion to seal after a protective order is entered in this proceeding and/or to withdraw provisionally sealed papers and exhibits.

ORDER

In accordance with the foregoing, it is hereby:

ORDERED that Patent Owner's Motion to Seal Exhibit 2272, Exhibit 2273, and Paper 58 is *denied* without prejudice;

FURTHER ORDERED that Exhibits 2272 and 2273, and Paper 58 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.

IPR2015-00903
Patent 8,129,431 B2

PETITIONERS:

Jitendra Malik
jitty.malik@alston.com
Lance Soderstrom
lance.soderstrom@alston.com
Joseph Janusz
joe.janusz@alston.com
James Abe
james.abe@alston.com

Deborah Yellin
dyellin@crowell.com
Jonathan Lindsay
jLindsay@Crowell.com
Shannon Lentz
SLentz@Crowell.com

PATENT OWNER:

Bryan Diner
bryan.diner@finnegan.com
Justin Hasford
justin.hasford@finnegan.com
Joshua Goldberg
Joshua.goldberg@finnegan.com