

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.

Petitioner,

v.

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

Patent Owner.

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

Filed: July 29, 2016

PETITIONER'S MOTION TO SEAL UNDER 37 C.F.R. § 42.54

¹ IPR2015-01871 has been joined with IPR2015-00903.

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	GOOD CAUSE EXISTS FOR SEALING CONFIDENTIAL INFORMATION IN EXHIBITS 2109 AND 2082 AND PATENT OWNER'S RESPONSE.....	2
III.	CERTIFICATION OF NON-PUBLICATION.....	5
IV.	CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37.C.F.R. § 42.54.....	6
V.	PROPOSED PROTECTIVE ORDER.....	6
VI.	CONCLUSION.....	6

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 77. 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 IPR2015-00903, the Board denied without prejudice Petitioner’s Motion to Seal. Paper 80. 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.

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 provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.