

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 IPR2015-00903¹
Patent 8,129,431 B2

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

OBERMANN, *Administrative Patent Judge*.

ORDER
Granting Second Motion for
Entry of Stipulated Protective Order
37 C.F.R. §§ 42.14 and 42.54

¹ Case IPR2015-1871 has been joined with this proceeding.

In an Order dated June 21, 2016, the Board denied Patent Owner’s request to enter a Stipulated Protective Order. Paper 77. That same day, the Board denied without prejudice all pending motions to seal documents. Papers 77–80. On July 25, 2016, “Petitioners Innopharma and Lupin and Patent Owner Senju” jointly filed a Second Motion for Entry of a Stipulated Protective Order. Paper 81, 2 (“Motion” or “Mot.”). This Order addresses that Motion, which includes a copy of an Amended Proposed Stipulated Protective Order. Mot., App’x A (“Amended SPO”).

The Motion shows how the Amended Stipulated Protective Order differs from the Board’s Default Protective Order. Mot., App’x B. The Board entered a Final Written Decision on July 28, 2016. Paper 83. Thereafter, the parties filed motions to seal documents under the terms of the Amended Stipulated Protective Order. *See* Papers 86, 88, 89. Concurrently herewith, we issue orders addressing those motions to seal.

Procedural History of Request for Entry of Stipulated Protective Order

Previously, the Board determined that the proposed Stipulated Protective Order was “not in adequate form for entry.” Paper 77, 3. We identified three reasons for that determination. First, the proposed order recited “variations of the term ‘party’ with apparently different meanings.” *Id.* Second, we determined that a proposed category of confidential information—namely, “PROTECTIVE ORDER MATERIAL—FED R. EVID 615”—was not shown to be necessary, given that discovery had concluded. *Id.* Third, we recommended that, “rather than reciting that nothing in the proposed order ‘shall amend or alter the Stipulated Discovery

Confidentiality Order’ filed in” related district court litigation, any stipulated protective order entered by the Board should “apply only to the captioned proceedings.” *Id.* at 4.

Granting Entry of Amended Stipulated Protective Order

The Motion proposes an Amended Stipulated Protective Order that addresses adequately each of the Board’s previous concerns. First, variations of the term “party” are omitted in favor of definitions that provide further clarification, including the “narrowly defined term ‘Non-Joinder Party’.” Mot. 2; *see* Amended SPO ¶¶ 2–3. Second, the category of confidential information designated as PROTECTIVE ORDER MATERIAL—FED R. EVID 615 is removed “because this category is no longer necessary now that discovery has been completed.” Mot. 2–3; *see* Amended SPO ¶ 1. Third, the Amended Stipulated Protective Order does not include a “discussion of the Stipulated Discovery Confidentiality Order filed in the parallel district court litigation.” Mot. 3. *See generally* Amended SPO.

Regarding the parties’ proposed designation of confidential information as Board Only (Amended SPO ¶ 3), the parties are advised that when documents are designated as Board Only in the Board’s filing system, access is limited to the Board. Any agreed-upon disclosure to other entities shall be the responsibility of the filing party.

Because the Amended Stipulated Protective Order addresses our previous concerns, we determine that the Motion is in condition for allowance. Entry of a protective order is necessary because both parties seek

IPR2015-00903
Patent 8,129,431 B2

to seal documents alleged to reflect confidential information. *See* Papers 86, 88, 89; see 37 C.F.R. § 42.54 (contemplating that a motion to seal shall include a proposed protective order). Accordingly, the Motion is *granted*.

It is

ORDERED that the parties' joint Motion for Entry of Stipulated Protective Order (Paper 81) is *granted*; and

FURTHER ORDERED that the Amended Proposed Stipulated Protective Order (Paper 81, App'x A) shall govern the disclosure of confidential information in this proceeding.

IPR2015-00903
Patent 8,129,431 B2

PETITIONER:

Jitendra Malik
jitty.malik@alston.com

Lance Soderstrom
lance.soderstrom@alston.com

Hidetada James Abe
james.abe@alston.com

Joseph Janusz
joe.janusz@alston.com

Deborah Yellin
dyellin@crowell.com

Jonathan Lindsay
jLindsay@Crowell.com

Shannon Lentz
SLentz@Crowell.com

PATENT OWNER:

Bryan C. Diner
bryan.diner@finnegan.com

Justin J. Hasford
justin.hasford@finnegan.com

Joshua L. Goldberg
joshua.goldberg@finnegan.com