

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<sup>1</sup>  
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 Patent Owner's Renewed Motion to Seal  
*37 C.F.R. §§ 42.14 and 42.54*

---

<sup>1</sup> 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 29, 2016, Petitioner filed a Renewed Motion to Seal. Paper 86 (“Motion” or “Mot.”). This Order addresses that Motion. Patent Owner avers that “Petitioner Lupin” does not oppose the Motion. *See* Mot. 1. No party has filed an opposition to the Motion.

Concurrently herewith, we enter an Order granting the parties' joint request for entry of an Amended Stipulated Protective Order (Paper 81, App'x A (copy of Amended Stipulated Protective Order)), which governs disclosure of confidential information in this proceeding.

*New Public Versions of Certain Documents Marked Confidential*

Patent Owner does not seek to seal certain portions of documents that were marked confidential and filed provisionally under seal in this proceeding. Mot. 2–3 (identifying documents previously marked as confidential and filed provisionally under seal; namely, portions of Patent Owner's Response (Paper 33), Petitioner's Reply to Patent Owner's Response to Petition (Ex. 2271), Patent Owner's Motion for Observations (Paper 58), and declarations or testimony of Dr. Paul Laskar (Ex. 2114 and Ex. 2272), Ivan Hoffman (Ex. 2273), Robert O. Williams (Ex. 2082), and Stephen G. Davies (Ex. 2105)). Patent Owner states that it will file new public versions of those papers and exhibits without the “PROTECTIVE ORDER MATERIAL—FED R. EVID 615” marking. *Id.* Patent Owner has completed that action. *See* Papers 33, 58, Ex. 2015, Ex. 2082, Ex. 2114,

Ex. 2271, Ex. 2272, Ex. 2273. Most of those documents were the subject of Patent Owner's prior motion to seal (Paper 36) that was denied without prejudice (Paper 77).

Patent Owner further states that is does not seek to seal certain research and development presentations (Ex. 2220 and Ex. 2226) that were the subject of our prior decision (Paper 77) that denied without prejudice Patent Owner's prior motion to seal (Paper 36). Mot. 2–3. Patent Owner states that a public version of those exhibits will be filed. *Id.* at 3. Patent Owner has completed that action. *See* Ex. 2220, Ex. 2226.

No further action is required regarding the above documents.

*Granting Request to Seal New Drug Application Exhibits*

Patent Owner requests to seal portions of Exhibits 2096, and further, to seal in their entirety Exhibits 2102, 2103, and 2110. Mot. 1. Patent Owner identifies those exhibits as excerpts of Patent Owner's New Drug Application ("NDA"). *Id.* at 5. We previously denied Patent Owner's prior motion to seal Exhibit 2096 because Patent Owner sought to seal that document in its entirety without establishing adequately that all of the material reflected therein is confidential. Paper 77, 7. For example, we observed that page 1 of Exhibit 2096 "does not appear to contain any confidential or proprietary information" and directed Patent Owner to address that issue in any later-filed motion to seal Exhibit 2096. *Id.* Patent Owner accompanies its renewed request to seal Exhibit 2096 with a redacted version that addresses adequately the Board's concerns. Mot. 5, 6; Ex. 2096 (public version).

Based on our review of Exhibits 2102, 2103, and 2110, and Patent Owner's arguments pertaining to them, we are persuaded that good cause exists to seal those exhibits in their entirety. Mot. 6 (explaining that redaction "would not be practical"). "Petitioner Lupin" does not oppose sealing Exhibits 2096, 2102, 2103, or 2210 as proposed by Patent Owner, and no party has filed an opposition to that request. *See id.* at 5. Under the circumstances, Patent Owner's request to seal Exhibits 2096, 2102, 2103, and 2110 is *granted*.

Patent Owner requests to seal other documents alleged to reflect information contained in the exhibits relating to the NDA. Specifically, Patent Owner seeks to seal pages 3, 55–57, and 59 of Patent Owner's Response (Paper 34); paragraphs 152, 153, 177, 178, 180, 181, 185, 186, and 187 of the declaration of Dr. Williams (Ex. 2082); paragraphs 16, 41, and 49 of the declaration of Dr. Trattler (Ex. 2116), paragraphs 17, 56, 82, and 134 of the declaration of Dr. Jarosz (Ex. 2130); and pages 25, 26, 34, 35, 37–40, 49, and 53 of the deposition transcript of Mr. Hoffman (Ex. 2273). Mot. 5.

Patent Owner shows sufficiently that those documents "describe the confidential information contained in the NDA." *Id.* at 6. "Petitioner Lupin" does not oppose the sealing of those documents and, further, no party has filed an opposition to the Motion. *See id.* at 5. Accordingly, Patent Owner's request to seal those documents is *granted*.

*Requiring a Joint Stipulation and Counsel Certification*

By September 2, 2016, Patent Owner and Petitioner shall file a Joint Stipulation that identifies with particularity the exact portions (by page or paragraph number) of all sealed papers and exhibits that are cited in the Final Written Decision. The Joint Stipulation shall include a Counsel Certification attesting to the accuracy and completeness of the Joint Stipulation, including a statement verifying that the exact portion of each paper and exhibit cited in the Final Written Decision is identified (by page or paragraph number) in the Joint Stipulation.

We specifically provided the parties advance notice “that information subject to a protective order will become public if identified in a final written decision in this proceeding.” Paper 77, 4. Further, the Rules of Practice for Trial Before the Patent Trial and Appeal Board (“Rules of Practice”) provide that:

Confidential information that is subject to a protective order ordinarily will become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial. *There is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial.* A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.

77 Fed. Reg. No. 157, Part V at Section I.E.6. (Aug. 14, 2012) (emphasis added). There is a presumption, therefore, that any confidential information cited in the Final Written Decision, entered July 28, 2016, shall become public on September 12, 2016.

# 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.