

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 Patent Owner's Second Renewed Motion to Seal (Paper 89)
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. Thereafter, on July 28, 2016, the Board entered a Final Written Decision. Paper 82. On August 2, 2016, Patent Owner filed a Second Renewed Motion to Seal. Paper 89 (“Motion” or “Mot.”). This Order addresses that Motion. Patent Owner states 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.

Request to Seal Deposition Transcript Excerpts

Patent Owner requests to seal identified portions of deposition transcripts of Dr. Daryl S. Paulson (Ex. 1123), Dr. William B. Trattler (Ex. 1120), and Dr. Robert O. Williams (Ex. 1099) (“transcripts sought to be sealed”). Mot. 1–2 (identifying by page and line number each portion of each transcript that is sought to be sealed). Patent Owner supports its request with a statement that the deposition transcripts sought to be sealed reveal “certain Patent Owner confidential information, related to Patent Owner's New Drug Application (“NDA”) (Ex. 2096, 2102, 2103, 2110, 2251).” *Id.* at 1. Ex. 2096, 2102, 2103, and 2110 are the subject of Patent

Owner's Renewed Motion to Seal (Paper 86), which we grant in an Order filed concurrently herewith.

Exhibit 2251 has not been filed in the record of this proceeding, but was filed under seal in related IPR2015-00902 ("IPR 902"), and was placed under seal in an Order, filed concurrently herewith in IPR 902, granting Patent Owner's Renewed Motion to Seal (IPR 902, Paper 98) in that related proceeding.

Under the circumstances, Patent Owner shows sufficiently that the portions of the deposition transcripts—revealing information reflected in those sealed exhibits—should also be sealed. *Id.* at 1–2. Accordingly, the Motion 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.

A strong public interest favors maintaining a complete and understandable record of the patent history, including the factual basis for the Board’s findings and the intelligibility of the Final Written Decision. Patent Owner recognizes that public interest but fails to show sufficiently that it is outweighed by any private business interest. Mot. 4–5, 9. By placing confidential information before the Board, Patent Owner accepted the risk that the information would become public if relied upon in the Final Written Decision. Rules of Practice, 77 Fed. Reg. No. 157, Part V at Section I.E.6. (Aug. 14, 2012) (“There is an expectation that information will be made public where the existence of the information . . . is identified in a final written decision following a trial.”).

Accordingly, all papers and exhibits identified in the Joint Stipulation shall be unsealed and made publicly available on September 12, 2016, unless

a revised public version of the paper or exhibit, conforming to the following requirements, is filed by September 2, 2016 (that is, ten days prior to the date set for unsealing). Specifically, a party may prevent the unsealing of any paper or exhibit identified in the Joint Stipulation by filing, no later than September 2, 2016, a revised public version of the paper or exhibit in which each page or paragraph cited in the Final Written Decision is left unredacted. Material not cited in the Final Written Decision may be redacted in the revised public version.

Other Matters

Any request for reconsideration of this Order shall be filed no later than September 2, 2016.

No further briefing is authorized at this time.

Should the parties require assistance in complying with this Order, the Board is available for a teleconference during the week of August 29, 2016. Counsel may initiate a request for a teleconference by sending an email to Trials@USPTO.gov.

It is

ORDERED that Patent Owner's Second Renewed Motion to Seal is *granted* to the extent set forth in this Order;

FURTHER ORDERED that, by September 2, 2016, Patent Owner and Petitioner shall file a Joint Stipulation of Papers and Exhibits as described in this Order, which identifies with particularity the exact portions (by page or

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