

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS II LLC,
Petitioner,

v.

NPS PHARMACEUTICALS, INC.,
Patent Owner.

Cases IPR2015-01093
Patent 7,056,886 B2

Before LORA M. GREEN, JACQUELINE WRIGHT BONILLA, and
SHERIDAN K. SNEDDEN, *Administrative Patent Judges*.

SNEDDEN, Administrative Patent Judge.

DECISION

Granting Patent Owner's Motions to Seal and
Granting Petitioner's Motion to Seal
37 C.F.R. §§ 42.14 and 42.54

I. INTRODUCTION

In accordance with 37 C.F.R. §§ 42.14 and 42.54, NPS Pharmaceuticals, Inc. (“Patent Owner”) filed a First Motion to Seal. Paper 32. In its First Motion to Seal, Patent Owner moves to seal portions of Exhibits 2051¹ and 2041² and the entirety of Exhibits 2056³ and 2075.⁴ Paper 32, 5–6. Patent Owner contends that the redacted portions in the corresponding non-confidential public versions of Exhibits 2051 and 2041 “summarize sensitive competitive information relating to R&D and testing and marketing research.” *Id.* at 2. Patent Owner contends that Exhibits 2056 and 2075 contain “R&D and testing and marketing research at a competitively significant level.” *Id.* at 3.

In the same Motion, Patent Owner requests entry of a Proposed Stipulated Protective Order (Ex. 2050). *Id.* at 10.

In a Second Motion to Seal, Patent Owner moves to seal portions of Exhibit 2170.⁵ Paper 50, 1. Patent Owner contends that the redacted portions in the corresponding non-confidential public version of Exhibit 2170 references and discusses confidential subject matter contained in

¹ Declaration of John F. Carpenter, Ph.D. in Support of Patent Owner’s Response.

² Declaration of Gordon Rausser, Ph.D. Under 37 C.F.R. § 1.68 in Support of Patent Owner’s Response to the Petition.

³ Process Validation and/or Evaluation for Gattex.

⁴ Shire, “Gattex Physician ATU Final Report,” October 22, 2015.

⁵ Transcript of Video Deposition of Ivan Hoffmann.

Exhibit 2075.

In Petitioner's Motion to Seal, Petitioner moves to seal portions of Exhibits 1042⁶ and 1077.⁷ Paper 42, 1. Petitioner contends that Exhibits 1042 and 1077 reference documents or information that is deemed "Protective Order Material" by NPS Pharmaceuticals, Inc. *Id.*

II. DISCUSSION

Generally speaking, all papers and evidence in the record of an *inter partes* review shall be made available to the public, except as otherwise ordered. Documents filed with a motion to seal, however, shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. The standard for granting a motion to seal is "good cause." 37 C.F.R. § 42.54. There is a strong public policy that favors making information filed in *inter partes* review proceedings open to the public. *See Garmin Int'l v. Cuozzo Speed Techs., LLC*, Case IPR2012-00001, slip op. at 1-2 (PTAB Mar. 14, 2013) (Paper 32) (discussing the standards applied to motions to seal). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. *See Garmin*, slip op. at 3.

Having reviewed Patent Owner's First and Second Motions to Seal,

⁶ Reply Declaration of Ivan Hofmann.

⁷ Deposition Transcript of Gordon Rausser, Ph.D. dated March 23, 2016.

Petitioner's Motion to Seal, the documents sought to be sealed, and the proposed redactions, we find that the information that Patent Owner and Petitioner seek to file under seal appears, on its face, to contain confidential research, development, or commercial information. Accordingly, we determine good cause exists to seal Exhibits 1042, 1077, 2041, 2051, 2056, 2075, and 2170 as requested in by the parties. We are persuaded that those exhibits present confidential information as contended by the parties.

The parties have conferred and have reached agreement as to the terms and the scope of the Proposed Protective Order (Ex. 2050). Paper 42, 1; Paper 50, 1. The parties have provided a detailed discussion explaining the differences between the proposed protective order and the default protective order. Paper 32, 10. In particular, the Proposed Protective Order differs from the Default Protective Order as follows:

First, paragraph two has been amended to specify that confidential information is to be marked "PROTECTIVE ORDER MATERIAL." . . .

Second, paragraph three has been added to allow for certain highly sensitive confidential information to be marked "PROTECTIVE ORDER MATERIAL – ATTORNEYS' EYES ONLY." Information with this designation may only be disclosed to outside counsel, retained experts, the Office and Support Personnel.

Id. We further note the Proposed Protective Order includes the necessary terms as outlined in the Office Practice Guide. *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48770 (Aug. 14, 2012). Accordingly, the Proposed Stipulated Protective Order (Ex. 2050), as filed by Patent Owner along with its First Motion to Seal, is acceptable.

We remind the parties that confidential information that is subject to a protective order ordinarily becomes public 45 days after denial of a petition to institute or 45 after final judgment in a trial. A party seeking to maintain the confidentiality of the information may file a motion to expunge the information from the record prior to the information becoming public. *See* 37 C.F.R. § 42.56.

III. ORDER

Accordingly, it is

ORDERED that Patent Owner's First Motion to Seal is *granted* as to Exhibits 2051, 2041, 2056, and 2075;

FURTHER ORDERED that Patent Owner's Second Motion to Seal is *granted* as to Exhibit 2170;

FURTHER ORDERED that Petitioner's Motion to Seal is *granted* as to Exhibits 1042 and 1077;

FURTHER ORDERED that the Proposed Protective Order agreed to by the parties (Exhibit 2050) is hereby entered into this proceeding; and

FURTHER ORDERED that this Protective Order shall govern the conduct of the proceeding unless otherwise modified.

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