

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LUPIN LTD. and LUPIN PHARMACEUTICALS INC., INNOPHARMA
LICENSING, INC., INNOPHARMA LICENSING LLC, INNOPHARMA
INC., INNOPHARMA LLC, MYLAN PHARMACEUTICALS INC., and
MYLAN INC.,

Petitioner,

v.

SENJU PHARMACEUTICAL CO., LTD.,
Patent Owner

Case IPR2015-01097 (Patent 8,754,131 B2)^{1,2}
Case IPR2015-01099 (Patent 8,669,290 B2)
Case IPR2015-01100 (Patent 8,927,606 B1)³
Case IPR2015-01105 (Patent 8,871,813 B2)⁴

JOINT MOTION TO SEAL

¹ A word-for-word identical paper has been filed in each proceeding identified in
the heading.

² Case IPR 2016-00089 has been joined with this proceeding.

³ Case IPR 2016-00091 has been joined with this proceeding.

⁴ Case IPR 2016-00090 has been joined with this proceeding.

IPR2015-01097 (Patent 8,754,131 B2)
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IPR2015-01100 (Patent 8,927,606 B1)
IPR2015-01105 (Patent 8,871,813 B2)

I. Introduction

Through this Joint Motion to Seal and through the Motion to Enter Stipulated Protective Order, submitted concurrently by Patent Owner, Patent Owner and Petitioner Lupin request that Petitioner Lupin Ltd.'s Abbreviated New Drug Application ("ANDA") (Ex. 2109) and portions of the confidential versions of Patent Owner's Response (Paper 22 in IPR2015-01099 and Paper 23 in IPR2015-01097, IPR2015-01100, and IPR2015-01105) and portions of the confidential version of Patent Owner's expert declaration of Robert O. Williams, Ph.D. (Exs. 2082) citing or substantially describing Ex. 2109 be sealed. The parties certify that the information identified as confidential in this motion has not been published or otherwise made public.

II. Governing Rules and PTAB Guidance

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 but a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion.

Similarly, 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

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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.

It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7)(“The Director shall prescribe regulations -- . . . providing for protective orders governing the exchange and submission of confidential information”). In that regard, the *Office Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012) provides:

The rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.

* * *

Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.
§ 42.54.

IPR2015-01097 (Patent 8,754,131 B2)
IPR2015-01099 (Patent 8,669,290 B2)
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The standard for granting a motion to seal is “for good cause,” 37 C.F.R. § 42.54, and the moving party has the burden of proof in showing entitlement to the requested relief, 37 C.F.R. § 42.20(c).

A motion to seal is also required to include a proposed protective order and a certification that the moving party has in good faith conferred or attempted to confer with the opposing party in an effort to come to an agreement as to the scope of the proposed protective order for this *inter partes* review. 37 C.F.R. § 42.54.

III. Background and Identification of Confidential Information

As discussed with the Board on November 17, 2015, the parties, along with Petitioner InnoPharma Licensing, Inc., are involved in ten related IPR proceedings, specifically, IPR2015-00902, IPR2015-00903, IPR2016-00089, IPR2016-00090, and IPR2016-00091 (filed by Petitioner InnoPharma Licensing, Inc. et al.) and IPR2015-01871, IPR2015-01097, IPR2015-01099, IPR2015-01100, and IPR2015-01105 (filed by Petitioner Lupin Ltd. et al.) (“Related IPR Proceedings”).

Collectively, the Related IPR Proceedings involve five patents (U.S. Patent Nos. 8,669,290; 8,129,431; 8,754,131; 8,927,606; and 8,871,813) (collectively, the “Patents-at-Issue”), which all share the same specification and are owned by Patent Owner. On January 25, 2016, the Board granted institution in IPR2015-01871 and

IPR2015-01097 (Patent 8,754,131 B2)
IPR2015-01099 (Patent 8,669,290 B2)
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IPR2015-01105 (Patent 8,871,813 B2)

joined that proceeding to IPR2015-00903, both involving the '431 patent.

IPR2015-01871, Paper 13. On February 25, 2016, the Board: (1) granted institution in IPR2016-00089 and joined that proceeding to IPR2015-01097, both involving the '131 patent, *see* IPR2016-00089, Paper 22; (2) granted institution in IPR2016-00090 and joined that proceeding to IPR2015-01105, both involving the '813 patent, *see* IPR2016-00090, Paper 13; and (3) granted institution in IPR2016-00091 and joined that proceeding to IPR2015-01100, both involving the '606 patent, *see* IPR2016-00089, Paper 14.

In anticipation of the Board's possible joinder order, Patent Owner and Petitioner Lupin crafted the Proposed Stipulated Protective Order (signed on February 8, 2016) contemplating that Lupin's petitions in IPR2015-01097, IPR2015-01105, and IPR2015-01100, and InnoPharma's petitions in IPR2016-00089, IPR2016-00090, and IPR2016-00091 could be joined. Now that the proceedings are joined, there are certain exhibits (*see, e.g.*, Ex. 2109) containing confidential information belonging to Petitioners InnoPharma and Lupin that each would like to keep confidential, including from one another. To accomplish this goal, Patent Owner is filing Ex. 2109 as "PROTECTIVE ORDER MATERIAL - BOARD'S EYES ONLY" under the Proposed Stipulated Protective Order.

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