

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners,

v.

SENJU PHARMACEUTICAL CO., LTD.,

Patent Owner.

Case IPR2015-01097 (Patent 8,754,131 B2)¹

Case IPR2015-01100 (Patent 8,927,606 B1)²

Case IPR2015-01105 (Patent 8,871,813 B2)³

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

FRANKLIN, *Administrative Patent Judge*.

DECISION⁴

Denying Petitioners' Motion to Seal Exhibit 1181

37 C.F.R. § 42.14

I. INTRODUCTION

¹ Case IPR2016-00089 has been joined with this proceeding.

² Case IPR2016-00091 has been joined with this proceeding.

³ Case IPR2016-00090 has been joined with this proceeding.

⁴ This Decision relates to and shall be filed in each referenced case.

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

In each of the captioned proceedings, Petitioners filed a Motion to Seal the transcript of the deposition of Ivan T. Hofmann taken in IPR2015-00902 and IPR015-00903 (Ex. 1181). Paper 50⁵ (“Mot.”).

For the reasons described in the following discussion, we *deny* without prejudice Petitioners’ Motion to Seal Exhibit 1181.

II. DISCUSSION

“There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in an issued patent and therefore affects the rights of the public.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). A motion to seal may be granted for good cause. 37 C.F.R. § 42.54. The moving party bears the burden of showing that there is good cause for the relief requested, including why the information is appropriate to be filed under seal. 37 C.F.R. §§ 42.20, 42.54. The Office Patent Trial Practice Guide notes that 37 C.F.R. § 42.54 identifies 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. 77 Fed. Reg. at 48,760. Until a motion to seal is decided, documents filed with the motion shall be sealed provisionally. 37 C.F.R. § 42.14.

⁵ Petitioners state the “word-for-word” identical paper was filed in each captioned proceeding. Paper and Exhibit numbers are the same in each of those proceeding.

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Petitioners assert, “It is Petitioners’ understanding that this document has been designated by Patent Owner as Protective Order Material or Fed. R. Evid. 615 Materials.” Mot. 1. We have no record of that designation. Petitioner cites only to the “Proposed Stipulated Protective Orders.” *Id.* Exhibit 1181, however, is not cited in any previous motion to seal or proposed protective order. Petitioners’ motion fails to characterize what portion of the exhibit is deemed confidential and why. In other words, Petitioners, as the moving party, have failed their burden of showing that there is good cause for the relief requested. *See* 37 C.F.R. §§ 42.20, 42.54. Indeed, Petitioner states that it “makes no assertion as to whether or not [Exhibit 1181] may contain confidential information.” *Id.*

Moreover, a protective order has not been entered in the captioned proceedings and an acceptable proposed protective order has not been filed.

For the foregoing reasons, Petitioners’ Motion to Seal Exhibit 1181 is *denied* without prejudice. We exercise our discretion to maintain Exhibit 1181 under a provisional seal, in the manner requested, through July 31, 2016, to allow time for a party to file motion to seal the exhibit, showing good cause for the relief requested, after a protective order is entered in this proceeding, and/or to withdraw the provisionally sealed exhibit.

ORDER

In accordance with the foregoing, it is hereby:

ORDERED that the Petitioners’ Motion to Seal Exhibit 1181 is *denied* without prejudice;

FURTHER ORDERED that Exhibit 1181 shall remain provisionally sealed until further notice by the Board;

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FURTHER ORDERED a party may file a revised or new motion to seal and/or withdraw provisionally sealed Exhibit 1181 on or before July 31, 2016; and

FURTHER ORDERED that any opposition to a revised or new motion to seal shall be filed within 5 business days after the filing of the motion.

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