

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LUPIN LTD. and LUPIN PHARMACEUTICALS INC.
Petitioner,

v.

SENJU PHARMACEUTICAL CO., LTD.
Patent Owner.

IPR2015-01097 (US Patent No. 8,751,131)
IPR2015-01099 (US Patent No. 8,669,290)
IPR2015-01100 (US Patent No. 8,927,606)
IPR2015-01105 (US Patent No. 8,871,813)¹

PATENT OWNER'S MOTION TO SEAL

¹ The word-for-word identical paper is filed in each proceeding identified in the heading. IPR2016-00089 has been joined with IPR2015-01097; IPR2016-00091 has been joined with IPR2015-01100; and IPR2016-00090 has been joined with IPR2015-01105. Each of these joined proceedings includes Petitioners InnoPharma Licensing, Inc., InnoPharma Licensing LLC, InnoPharma Inc., Mylan Pharmaceuticals Inc., and Mylan Inc. (collectively, "InnoPharma") in addition to the parties identified above.

IPR2015-01097 (US Patent No. 8,751,131)
IPR2015-01099 (US Patent No. 8,669,290)
IPR2015-01100 (US Patent No. 8,927,606)
IPR2015-01105 (US Patent No. 8,871,813)

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Governing Rules and PTAB Guidance.....	1
III.	Good Cause Exists for Sealing Exhibit 2323 Containing Patent Owner Confidential Information	3
IV.	Conclusion	4

IPR2015-01097 (US Patent No. 8,751,131)
IPR2015-01099 (US Patent No. 8,669,290)
IPR2015-01100 (US Patent No. 8,927,606)
IPR2015-01105 (US Patent No. 8,871,813)

I. Introduction

Through this Motion to Seal, Patent Owner requests that confidential portions of Ex. 2323, Reply Expert Report of John C. Jarosz on Objective Indicia of Non-Obviousness, from the related *Senju Pharmaceutical, et al. v. Lupin Ltd. et al.*, No. 14-cv-00667, be sealed. With the filing of this Motion, Patent Owner will also file a redacted version of Ex. 2323. Under 37 C.F.R. § 42.54, Patent Owner renews its request for entry of the Proposed Stipulated Protective Order, (Paper 26 in IPR2015-1097, IPR2015-01100, and IPR2015-01105, and Paper 25 in IPR2015-1099), filed on February 25, 2016. To the best of Patent Owner's knowledge, the Patent Owner certifies that the information identified as confidential in this motion has not been published or otherwise made public. Petitioner does not oppose this motion to seal.

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:

IPR2015-01097 (US Patent No. 8,751,131)
IPR2015-01099 (US Patent No. 8,669,290)
IPR2015-01100 (US Patent No. 8,927,606)
IPR2015-01105 (US Patent No. 8,871,813)

The record of a proceeding, including documents and things, shall be made available to the public, except as 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

IPR2015-01097 (US Patent No. 8,751,131)
IPR2015-01099 (US Patent No. 8,669,290)
IPR2015-01100 (US Patent No. 8,927,606)
IPR2015-01105 (US Patent No. 8,871,813)

research, development, or commercial information.

§ 42.54.

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. Good Cause Exists for Sealing Exhibit 2323 Containing Patent Owner Confidential Information

Patent Owner requests that confidential portions of Ex. 2323, specifically on pages 26 and 39, be sealed under 37 C.F.R. § 42.14. As explained herein, good cause exists for sealing this information. This document contains Patent Owner’s market information related to Patent Owner’s commercial embodiment of the Patents-at-Issue. Patent Owner and Dr. Jarosz rely on these materials to show Patent Owner’s commercial success.

The Board’s rules provide for the protection of trade secret or other confidential commercial information. *See* 77 Fed. Reg. at 48,760. Here, the

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.