

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.

Case IPR2015-01099

Patent 8,669,290 B2

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

FRANKLIN, *Administrative Patent Judge*.

DECISION

*Denying Petitioner's and Patent Owner's Joint Motion to Seal
Exhibits 2082, 2109, and Patent Owner's Response
37 C.F.R. § 42.14*

I. INTRODUCTION

Petitioner. and Patent Owner Senju Pharmaceutical Company, Ltd. (“the parties”) filed a Joint Motion to Seal the entirety of Exhibit 2109 (Petitioner Lupin’s Amended New Drug Application (“ANDA”)) and portions of Patent Owner’s Response, Paper 23, and Exhibit 2082 (the declaration of Dr. Robert O. Williams). Paper 25 (“Mot.”).

The parties explain that those materials contain confidential material that Petitioner Lupin would does not want to disclose to Petitioner InnoPharma or Patent Owner. Mot. 5. To that end, the parties request that those materials be sealed as “PROTECTIVE ORDER MATERIAL–BOARD’S EYES ONLY.” *Id.*

For the reasons described in the following discussion, we *deny* without prejudice the Joint Motion to Seal.

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.

The parties assert that the information that it seeks to seal has not been made public. Mot. 6. In particular, the parties assert that Petitioner Lupin’s ANDA was filed confidentially with the Food and Drug Administration, and Exhibit 2109 is an excerpt of that filing. *Id.* at 6–7. The parties state, “[t]he information that the parties seek to seal contains Lupin’s highly sensitive, confidential development information and technical, business information.” *Id.* According to the parties, if Exhibit 2109 becomes public, Petitioner Lupin’s competitors could gain an unfair competitive advantage. *Id.*

Further, the parties assert that portions of the Patent Owner’s Response (Paper 23, a portion of page 50) and the Williams declaration (Ex. 2082 ¶¶ 201 and 234) cite or substantially describe the information contained in Exhibit 2109 in connection with discussions of secondary considerations of non-obviousness. *Id.* at 7. Thus, for the same reasons asserted regarding Exhibit 2109, the parties request that we seal the identified portions of Paper 23 and Exhibit 2082. *Id.*

Although the parties have established that those materials represent or contain confidential information, a protective order has not been entered in the captioned proceedings and an adequate proposed protective order describing a category of confidential information to be designated as “PROTECTIVE ORDER MATERIAL – BOARD’S EYES ONLY” has not been filed. Thus, the joint motion to seal is *denied* without prejudice. Under the circumstances, we exercise our discretion to maintain Exhibits 2082, 2109, and Papers 22 and 23 under a provisional seal, in the manner

requested, through July 31, 2016, to allow time for the parties to file a renewed motion to seal after a protective order is entered in this proceeding and/or to withdraw provisionally sealed papers and exhibits.

ORDER

In accordance with the foregoing, it is hereby:

ORDERED that the Joint Motion to Seal is *denied* without prejudice;
FURTHER ORDERED that Exhibits 2082, 2109, and Papers 22 and 23, shall remain provisionally sealed until further notice by the Board;

FURTHER ORDERED the parties may file a renewed motion to seal and/or withdraw provisionally sealed exhibits on or before July 31, 2016;
and

FURTHER ORDERED that any opposition to a renewed motion to seal shall be filed within 5 business days after the filing of the motion(s).

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