

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LUPIN LTD. and LUPIN PHARMACEUTICALS INC.,  
Petitioner,

v.

SENJU PHARMACEUTICAL CO., LTD.,  
Patent Owner.

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Case IPR2015-01099  
Patent 8,699,290 B2

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

OBERMANN, *Administrative Patent Judge*.

ORDER  
Granting Patent Owner's Second Renewed Motion to Seal  
*37 C.F.R. §§ 42.14*

On July 29, 2016, Patent Owner filed a Second Renewed Motion to Seal. Paper 68 (“Motion” or “Mot.”). This Order addresses that Motion. Concurrently herewith, we issue an order granting Petitioner’s request for entry of the Board’s Default Protective Order. A Final Writtten Decision was entered by the Board on September 12, 2016. Paper 69.

Patent Owner seeks to seal exhibits and papers that are alleged to reflect confidential information belonging to Patent Owner and non-party BioScience. Mot. 1. Specifically, Patent Owner identifies by line and page number certain portions of deposition transcripts (Ex. 1123 (Paulson transcript), Ex. 1120 (Trattler transcript), and Ex. 1099 (Williams transcript)) as well as specific paragraphs of a witness declaration (Ex. 1122 (Hofmann declaration)) (referred to herein as the “deposition transcripts and witness declaration”) that reflect confidential information owned by Patent Owner or non-party BioScience. Mot. 1–2.

Patent Owner states that the deposition transcripts and witness declaration cite or describe confidential information reflected in other exhibits, namely, Patent Owner’s New Drug Application (“NDA”) (Exs. 2096, 2102, 2103, 2110, 2251, 2291–2293). *Id.* at 1. Those other exhibits are the subject of Patent Owner’s Renewed Motion to Seal (Paper 67), which we grant in an Order filed concurrently herewith. Under the circumstances, Patent Owner shows sufficiently that the identified portions of the deposition transcripts and witness declaration—revealing information reflected in those sealed exhibits—should also be sealed. Mot. 1–2.

No party has filed an opposition. Accordingly, Patent Owner’s request to seal the deposition transcripts and witness deposition is *granted*.

*Requiring a Joint Stipulation and Counsel Certification*

Within thirty five (35) days after entry of the Final Written Decision, Patent Owner and Petitioner shall file a Joint Stipulation that identifies with particularity the exact portions (by page or paragraph number) of all sealed papers and exhibits that are cited in the Final Written Decision. The Joint Stipulation shall include a Counsel Certification attesting to the accuracy and completeness of the Joint Stipulation, including a statement verifying that the exact portion of each paper and exhibit cited in the Final Written Decision is identified (by page or paragraph number) in the Joint Stipulation.

We specifically provided the parties advance notice “that information subject to a protective order will become public if identified in a final written decision in this proceeding.” Paper 61, 4. Further, the Rules of Practice for Trial Before the Patent Trial and Appeal Board (“Rules of Practice”) provide that:

Confidential information that is subject to a protective order ordinarily will become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial. *There is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial.* A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.

77 Fed. Reg. 48756, 48761, Section I.E.6. (Aug. 14, 2012) (emphasis added). There is a presumption, therefore, that any confidential information cited in the Final Written Decision shall become public forty five (45) days after entry of the Final Written Decision.

A strong public interest favors maintaining a complete and understandable record of the patent history, including the factual basis for the Board's findings and the intelligibility of the Final Written Decision. By placing confidential information before the Board, Petitioner accepted the risk that the information will become public if relied upon in the Final Written Decision. Rules of Practice, 77 Fed. Reg. 48756, 48761, Section I.E.6. (Aug. 14, 2012) (“There is an expectation that information will be made public where the existence of the information . . . is identified in a final written decision following a trial.”).

Accordingly, all papers and exhibits identified in the Joint Stipulation shall be unsealed and made publicly available forty five (45) days after entry of the Final Written Decision, unless a revised public version of the paper or exhibit, conforming to the following requirements, is filed no later than thirty five (35) days (that is, ten days prior to the date set for unsealing) after entry of the Final Written Decision. Specifically, a party may prevent the unsealing of any paper or exhibit identified in the Joint Stipulation by filing, no later than thirty five (35) days after entry of the Final Written Decision, a revised public version of the paper or exhibit in which each page or paragraph cited in the Final Written Decision is left unredacted. Material not cited in the Final Written Decision may be redacted in the revised public version.

It is  
ORDERED that Patent Owner's Second Renewed Motion to Seal is  
*granted* to the extent set forth in this Order;

FURTHER ORDERED that, within thirty five (35) days after entry of the Final Written Decision, Patent Owner and Petitioner shall file a Joint Stipulation as described in this Order, which identifies with particularity the exact portions (by page or paragraph number) of all sealed papers and exhibits that are cited in the Final Written Decision;

FURTHER ORDERED that the Joint Stipulation shall include a Counsel Certification attesting to the accuracy and completeness of the Joint Stipulation, including a statement verifying that the exact portion of each paper and exhibit cited in the Final Written Decision is identified (by page or paragraph number) in the Joint Stipulation;

FURTHER ORDERED that all papers and exhibits identified in the Joint Stipulation shall be unsealed and made publicly available forty five (45) days after entry of the Final Written Decision, unless a revised public version of the paper or exhibit, conforming to the requirements of this Order, is filed no later than thirty five (35) days (that is, ten days prior to the date set for unsealing) after entry of the Final Written Decision;

FURTHER ORDERED that a party may prevent the unsealing of any paper or exhibit identified in the Joint Stipulation by filing, no later than thirty five (35) days after entry of the Final Written Decision, a revised public version of the paper or exhibit in which each page or paragraph cited in the Final Written Decision is left unredacted.

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