

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)

**PATENT OWNER'S MOTION TO EXPUNGE
UNDER 37 C.F.R. § 42.56**

I. Statement of Relief Requested

Pursuant to 37 C.F.R. § 42.56, Patent Owner requests that the Board expunge from the record the confidential versions of Paper Nos. 22, 23, and 64 and Exs. 1099, 1120, 1122, 1123, 1154, 1181, 2082, 2096, 2102, 2103, 2110, 2116, 2126, 2128, 2130, 2251, 2258, 2267-2278, 2291-2293, 2294, and 2323, for the reasons stated herein.

II. Background

On July 29, 2016, Patent Owner filed a Renewed Motion to Seal concerning a number of Patent Owner's exhibits, listed below (*see* Paper No. 67), and on August 1, 2016, Patent Owner filed a Second Renewed Motion to Seal concerning additional exhibits, also listed below, (*see* Paper No. 68). On September 15, 2016, the Board granted Patent Owner's two motions to seal (*see* Paper Nos. 71, 72), sealing all or portions of the following papers and exhibits:

- Patent Owner's Response (citing to confidential exhibits), Paper Nos. 22 and 23 (filed February 25, 2016), and 64 (filed July 29, 2016).¹

¹ Paper 64 was a revised, confidential version of the Patent Owner's Response, filed on July 29, 2016, to conform with the marking requirements of the Default Protective Order, which the parties requested that the Board enter on July 29, 2016, and to remove redactions to information (specifically expert testimony) which Patent Owner no longer sought to seal.

- Excerpts of Patent Owner's New Drug Application: Ex. 2096 (filed July 29, 2016); Ex. 2102 (filed July 29, 2016); Ex. 2103 (filed July 29, 2016); Ex. 2110 (filed July 29, 2016); Ex. 2251 (filed July 29, 2016); Exs. 2291-2293 (filed July 29, 2016).²
- Information related to alleged commercial success of Patent Owner's product from a related district court case: Ex. 2258 (filed February 25, 2016); Ex. 2323 (filed May 5, 2016).
- Materials related to third-party BioScience's testing procedures: Exs. 2267-2278, 2294 (filed February 25, 2016).
- Expert Declarations: Hofmann (Ex. 1122) (filed April 22, 2016); Williams (Ex. 2082) (filed July 29, 2016); Trattler (Ex. 2116) (filed July 29, 2016); Myers (Ex. 2126) (filed July 29, 2016); Paulson (Ex. 2128) (filed February 25, 2016); and Jarosz (Ex. 2130) (filed July 29, 2016).³

² Revised, confidential versions of Exs. 2096, 2102, 2103, 2110, 2251, and 2291-2293 were filed on July 29, 2016 to conform with the marking requirements of the Default Protective Order.

³ Revised, confidential versions of Exs. 2082, 2116, 2126 and 2130 were filed on July 29, 2016 to conform with the marking requirements of the Default Protective

- Transcripts of Expert Cross Examinations: Dr. Paulson (Ex. 1123) (filed April 22, 2016); Dr. Trattler (Ex. 1120) (filed April 22, 2016); Dr. Williams (Ex. 1099) (filed April 22, 2016); and Mr. Hofmann (Ex. 1181) (excerpts from transcript) (filed May 18, 2016).

As outlined in the Joint Stipulation filed herewith, in its Final Written Decision of September 12, 2016, the Board referred to paragraphs containing sealed, confidential information, in the following papers and exhibits:

- Patent Owner's Response (Paper No. 22),
- Hofmann Declaration (Ex. 1122),
- Ex. 1154
- Williams Declaration (Ex. 2082), and
- Jarosz Declaration (Ex. 2130).

As also noted in the Joint Stipulation, the parties will file revised, public versions of Patent Owner's Response and Exs. 1122, 1154, 2082, and 2130, leaving unredacted the portions of those papers and exhibits cited by the Board in the Final Written Decision.

Order and to remove redactions to information (specifically expert testimony) which Patent Owner no longer sought to seal.

III. Reasons for the Relief Requested

In the Board's Order of September 15, 2016, the Board noted that, with respect to confidential information not cited in the Final Written Decision, a party seeking to maintain the confidentiality of such information may file a motion to expunge the information from the record prior to it becoming public. (*See* Paper No. 71 at 6.) Accordingly, Patent Owner requests the following papers and exhibits containing confidential information sealed by the Board, but not referred to in the Board's Final Written Decision, be expunged from the record:

- Patent Owner's Response (citing to confidential exhibits), Paper Nos. 22 and 23 (filed February 25, 2016), and 64 (filed July 29, 2016).
- Excerpts of Patent Owner's New Drug Application: Ex. 2096 (filed July 29, 2016); Ex. 2102 (filed July 29, 2016); Ex. 2103 (filed July 29, 2016); Ex. 2110 (filed July 29, 2016); Ex. 2251 (filed July 29, 2016); Exs. 2291-2293 (filed July 29, 2016).
- Information related to alleged commercial success of Patent Owner's product from a related district court case: Ex. 2258 (filed February 25, 2016)⁴; Ex. 2323 (filed May 5, 2016).

⁴ Only the confidential version of Ex. 2258 should be expunged.

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