

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 Patent Owner's Motion to Seal Exhibit 2323

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, Patent filed a Motion to Seal portions of the “Reply Expert Report of John C. Jarosz” (Exhibit 2323). Paper 42⁵ (“Mot.”). Patent Owner asserts that Petitioners do not oppose the motion. Mot. 1.

For the reasons described in the following discussion, we *deny* Patent Owner’s Motion to Seal Exhibit 2323.

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 Patent Owner states 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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Patent Owner asserts that to the best of its knowledge, the information in Exhibit 2323 identified as confidential has not been published or otherwise been made public. *Id.* Specifically, Patent Owner asserts that portions of pages 26 and 29 of Exhibit 2323 contain confidential information. *Id.* at 3. According to Patent Owner, the exhibit “contains Patent Owner’s commercial embodiment of the Patents-at-Issue,” relied upon to show Patent Owner’s commercial success. *Id.* Therefore, Patent Owner requests that the indicated portions of Exhibit 2323 be sealed as “PROTECTIVE ORDER MATERIAL,” for the duration of this proceeding. *Id.* at 4.

Patent Owner has sufficiently established that the cited portions of Exhibit 2323 contain confidential information. However, a protective order has not been entered in the captioned proceedings and an acceptable proposed protective order has not been filed. Thus, Patent Owner’s Motion to Seal Exhibit 2323 is *denied* without prejudice. Under the circumstances, we exercise our discretion to maintain Exhibit 2323 under a provisional seal, in the manner requested, through July 31, 2016, to allow time for Patent Owner to file a renewed motion to seal 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 Patent Owner’s Motion to Seal Exhibit 2323 is *denied* without prejudice;

FURTHER ORDERED that Exhibit 2323 shall remain provisionally sealed until further notice by the Board;

IPR2015-01097 (Patent 8,754,131 B2)
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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.

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