

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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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.

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Case IPR2015-01097 (Patent 8,754,131 B2)<sup>1</sup>  
Case IPR2015-01100 (Patent 8,927,606 B1)<sup>2</sup>  
Case IPR2015-01105 (Patent 8,871,813 B2)<sup>3</sup>

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

OBERMANN, *Administrative Patent Judge*.

ORDER<sup>4</sup>

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

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<sup>1</sup> Case IPR2016-00089 has been joined with this proceeding.

<sup>2</sup> Case IPR2016-00091 has been joined with this proceeding.

<sup>3</sup> Case IPR2016-00090 has been joined with this proceeding.

<sup>4</sup> This Order addresses issues common to each proceeding; therefore, we enter the identical order in each proceeding.

IPR2015-01097 (Patent 8,754,131 B2)  
IPR2015-01100 (Patent 8,927,606 B1)  
IPR2015-01105 (Patent 8,871,813 B2)

On July 29, 2016, Patent Owner filed a Renewed Motion to Seal. Paper 68 (“Motion” or “Mot.”).<sup>5</sup> Concurrently herewith, we issue an order granting the parties’ request for entry of an Amended Proposed Stipulated Protective Order. A Final Written Decision was entered by the Board on September 12, 2016. Paper 70.

Patent Owner seeks to seal the following exhibits and papers: (1) excerpts of Patent Owner’s New Drug Application (“NDA”) (Exs. 2096, 2102, 2103, 2110, 2251, 2291–2293); (2) information relating to assertions of alleged commercial success of Patent Owner’s product from a related district court case (Exs. 2258, 2323); and (3) certain testing reports and materials relating to assertedly proprietary testing methods of a third-party test company (Ex. 2267–2278, 2294).

Patent Owner further seeks to seal portions of Patent Owner’s Response (Paper 23) and witness declarations (Exs. 2126 (Myers), 2128 (Paulson), 2082 (Williams), 2116 (Trattler), and 2130 (Jarosz)) alleged to cite or describe the above categories of documents. Mot. 1. Patent Owner avers that “Petitioner Lupin does not oppose” the Motion. *Id.* No party has filed an opposition.

*Patent Owner’s NDA Documents and Filings Citing the NDA*

We previously denied a request to seal Exhibits 2096, 2102, 2103, 2110, 2251, 2291–2293 as well as portions of Patent Owner’s Response and

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<sup>5</sup> Patent Owner attests that a “word-for-word identical paper” was filed in each proceeding. Mot. 1 n.4. For convenience, we refer to papers filed in IPR2015-01097.

IPR2015-01097 (Patent 8,754,131 B2)  
IPR2015-01100 (Patent 8,927,606 B1)  
IPR2015-01105 (Patent 8,871,813 B2)

witness declarations that cite or describe those exhibits. Paper 58, 6–7. We denied that request because it was accompanied by a proposed stipulated protective order that was “not in an adequate form for entry.” *Id.* at 3. We further noted that the request to seal Exhibit 2096 pertains to the document in its entirety without establishing adequately that all of the material reflected therein is confidential. *Id.* at 7.

The parties have addressed adequately our prior concerns about the lack of an adequate protective order. Concurrently herewith, we issue an order granting the parties’ joint request to enter an Amended Proposed Stipulated Protective Order (Paper 64, App’x A), which governs disclosure of confidential information in these proceedings.

Patent Owner also has addressed adequately our prior concerns about Exhibit 2096 by providing a revised, redacted version of Exhibit 2096 that is available to the public. Patent Owner also presents information sufficient to demonstrate that Exhibits 2096, 2102, 2103, 2110, 2251, 2291–2293 reflect Patent Owner’s confidential information and that good cause exists for sealing those exhibits, as well as specific portions of the Patent Owner’s Response and the Myers, Trattler, Jarosz, and Willaims declarations that cite or describe the confidential information contained in those exhibits. Mot. 8–10. No party opposes the request. Accordingly, we *grant* Patent Owner’s request to seal the NDA and related portions of Patent Owner’s Response and witness declarations that cite or describe the NDA.

IPR2015-01097 (Patent 8,754,131 B2)  
IPR2015-01100 (Patent 8,927,606 B1)  
IPR2015-01105 (Patent 8,871,813 B2)

*Information Relating to Allegations of Commercial Success*

Patent Owner seeks to seal Exhibits 2258 and 2323, relating to allegations of secondary considerations of non-obviousness and, in particular, the alleged success of Patent Owner's commercial product. We previously denied a request to seal Exhibit 2258 (deposition testimony of Ms. Tracy Valorie, an officer of Patent Owner's parent company) because the exhibit contained "seven inconsecutive pages from a transcript of the deposition" and the first and second pages were not shown to reflect any confidential information. Paper 58, 8. Under those circumstances, we were not persuaded that Patent Owner had shown good cause for sealing Exhibit 2258 in its entirety. *Id.* Patent Owner has filed a revised public version of Exhibit 2258 that addresses our prior concerns, redacting no material on the first or second pages of the exhibit.

Exhibit 2323 was not the subject of a prior motion to seal. That exhibit is a Reply Expert Report of John C. Jarosz. Pages 26 and 39 of Exhibit 2323 are alleged to reflect Patent Owner's market information related to the commercial product at issue. Mot. 11.

Patent Owner presents information sufficient to demonstrate that Exhibits 2258 and 2323 reflect Patent Owner's confidential information and that good cause exists for sealing those exhibits. *Id.* at 10–11. Patent Owner also shows sufficiently that portions of Exhibit 2130 (a declaration of Mr. Jarosz) reflect confidential information contained in Exhibit 2258. *Id.* at 11.

No party opposes the request. Accordingly, we *grant* Patent Owner's request to seal Exhibits 2258 and 2323, as well as portions of the Jarosz declaration (Ex. 2130) that cite or describe those exhibits.

IPR2015-01097 (Patent 8,754,131 B2)  
IPR2015-01100 (Patent 8,927,606 B1)  
IPR2015-01105 (Patent 8,871,813 B2)

*Granting Request to Seal Exhibits of Non-Party BioScience*

In addition, Patent Owner requests to seal exhibits alleged to reflect confidential information owned by non-party BioScience, specifically, Exhibits 2267–2278, 2294 and portions of the Declaration of Dr. Paulson (Ex. 2128) that cite or describe those exhibits. Mot. 12. Previously, we denied Patent Owner’s prior request to seal those materials because Patent Owner had “neither demonstrated that the exhibits contain proprietary information nor established its standing to assert” any interest of BioScience in this proceeding. Paper 58, 9. The instant Motion, by contrast, is supported by a declaration of Deanna J. Field, Vice President of Finance and Administration of BioScience (Ex. 2347). That declaration establishes adequately BioScience’s interest in shielding from public disclosure certain proprietary testing protocol and standard operating procedures, kept confidential by BioScience, as reflected in Exhibits 2249–2263. Mot. 12; Ex. 2347, 3–11.

Patent Owner shows sufficiently that public disclosure of the information sought to be sealed would cause financial damage to BioScience. Ex. 2347, 11. Patent Owner further shows sufficiently that “BioScience has authorized Patent Owner to request that Exs. 2267-2278 and 2294 be sealed.” Mot. 12 (citing Ex. 2347, 2). Patent Owner submits an appropriately redacted public version of Exhibit 2267. Petitioner further shows sufficiently that the remaining exhibits in this category (Exhibits 2268–2278 and 2294) “contain confidential information on all but one page, thus redaction is not practical.” Mot. 12–13 (bridging sentence)

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