

Filed on behalf of Patent Owners Genentech, Inc. and City of Hope by:

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SANOFI-AVENTIS U.S. LLC AND
REGENERON PHARMACEUTICALS, INC.,
Petitioners

v.

GENENTECH, INC. AND CITY OF HOPE
Patent Owners

Case IPR2015-01624
Patent 6,331,415

PATENT OWNERS' MOTION TO SEAL

STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioners Genentech, Inc. and City of Hope respectfully request that the Board seal Exhibits 2033 (Declaration of Julie L. Davis), 2090 (Deposition Transcript of James H. Sabry, M.D.), 2091 (Deposition Transcript of Timothy R. Schwartz), 2093 (Expert Report of Robert C. Rickert, Ph.D.), 2114-2118 (Appendices A-E to Declaration of Julie L. Davis), 2130 (Compilation of License Agreements), 2131 (Compilation of Settlement Agreements), 2132 (Compilation of Royalty Statements), and 2139 (Selected Historical Financial Data).

REASONS FOR RELIEF REQUESTED

Although “the default rule is that all papers filed in an *inter partes* review are open and available for access by the public,” a party may file a motion with the Board to seal confidential information that is protected from disclosure. *Garmin v. Cuozzo*, IPR2012-00001, Paper No. 36. “The standard for granting a motion to seal is ‘for good cause.’” *Id.* (quoting 37 C.F.R § 42.54). The *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012), states that the “rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure (“FRCP”) 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.”

The parties have conferred and agreed to the provisions of the Modified Default Standing Protective Order set forth in Exhibit 2137, and have stipulated to be bound to the terms set forth therein. Exhibit 2138 shows the proposed modifications from the Default Standing Protective Order in redline. The Modified Default Standing Protective Order provides:

Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. The nonconfidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(Ex. 2137, Modified Default Standing Protective Order at 3.)

Exhibit 2033 is a declaration regarding secondary considerations by Patent Owners' expert Julie L. Davis. The redacted portions of Exhibit 2033 contain information pertaining to confidential royalty statements and licensing and

settlement terms with Patent Owners' competitors, and are therefore "confidential ... commercial information" pursuant to FRCP 26(c)(1)(G).

Exhibits 2114-2118 are Appendices A-E to the Declaration of Julie L. Davis (Exhibit 2033, discussed *supra*). Exhibit 2114 (Appendix A) is a summary of confidential license agreements pertaining to U.S. Patent No. 6,331,415. Exhibit 2115 (Appendix B) is a summary of confidential settlement agreements pertaining to U.S. Patent No. 6,331,415. Exhibit 2116 (Appendix C) is a summary of sales of Genentech's products pertaining to U.S. Patent No. 6,331,415, which is confidential proprietary company information. Exhibit 2117 (Appendix D) is a summary of licensee sales and royalties paid to Genentech pertaining to U.S. Patent No. 6,331,415, which is confidential proprietary company information. The redacted portion of Exhibit 2118 (Appendix E) contains confidential commercial information related to royalties paid to Genentech pertaining to U.S. Patent No. 6,331,415. Accordingly, Exhibits 2114-2118 are "confidential ... commercial information" pursuant to FRCP 26(c)(1)(G).

Exhibit 2130 is a compilation of license agreements involving U.S. Patent No. 6,331,415. The terms of these license agreements are confidential. The contents of this exhibit therefore constitute "confidential ... commercial information" pursuant to FRCP 26(c)(1)(G).

Exhibit 2131 is a compilation of settlement agreements involving U.S. Patent No. 6,331,415. The terms of these settlement agreements are confidential. The contents of this exhibit therefore constitute “confidential ... commercial information” pursuant to FRCP 26(c)(1)(G).

Exhibit 2132 is a compilation of royalty statements involving U.S. Patent No. 6,331,415. These royalty statements are confidential. The contents of this exhibit therefore constitute “confidential ... commercial information” pursuant to FRCP 26(c)(1)(G).

Exhibit 2139 describes confidential selected historical financial data for several of Genentech's products. This financial data constitutes “confidential ... commercial information” pursuant to FRCP 26(c)(1)(G).

Exhibits 2090 and 2091 are deposition transcripts of James H. Sabry, M.D., and Timothy R. Schwartz, respectively, from the district court litigation titled *Sanofi-Aventis U.S. LLC v. Genentech, Inc.*, No. 15-cv-05685 (C.D. Cal.). Exhibits 2090 and 2091 contain testimony concerning confidential and sensitive information regarding how Genentech's products are made. Exhibit 2091 was further marked as “Attorneys' Eyes Only” in the litigation.

Exhibit 2093 is an expert report of Robert C. Rickert, Ph.D. from the district court litigation titled *Bristol-Myers Squibb Co. v. Genentech, Inc.*, No. 13-cv-07248-MRP-JEM (C.D. Cal.). Exhibit 2093 contains confidential and sensitive

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