

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COALITION FOR AFFORDABLE DRUGS VIII, LLC,  
Petitioner,

v.

THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA,  
Patent Owner.

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Case IPR2015-01835 (Patent 8,618,135 B2)  
Case IPR2015-01836 (Patent 7,932,268 B2)<sup>1</sup>

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Before GRACE KARAFFA OBERMANN and MICHAEL P. TIERNEY,  
*Vice Chief Administrative Patent Judges*, LORA M. GREEN, *Administrative  
Patent Judge*.

GREEN, *Administrative Patent Judge*.

ORDER

*Granting Patent Owner's Motion to Seal  
37 C.F.R. §§ 42.14 and 42.54*

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<sup>1</sup> This order addresses issues that are the same in the identified cases. We exercise our discretion to issue one order to be filed in each case. The parties are authorized to use this style heading when filing a single paper in the listed proceedings, provided that such heading includes a footnote attesting that "the word-for-word identical paper is filed in each proceeding identified in the heading."

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Patent Owner filed a Motion to Seal in both of the above proceedings. Paper 19 in both IPR2015-01835 and IPR2016-01836. Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner seeks to seal portions of Exhibits 2057, 2081, and 2082 in both proceedings. *Id.* at 1. Patent Owner certifies that to the best of “the undersigned counsel’s knowledge, the information sought to be sealed by this motion has not been published or otherwise made public.” *Id.* at 3. Petitioner did not file an opposition to the Motion to Seal. In addition, the parties also seek entry of the default protective order. Paper 17 in both IPR2015-01835 and IPR2016-01836.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. The party moving to seal bears the burden of proof of showing entitlement to the requested relief, and establishing that information sought to be sealed is confidential information. 37 C.F.R. § 42.20(c). Only “confidential information” is protected from disclosure. 35 U.S.C. § 316(a)(7); *see* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

Under 35 U.S.C. § 326(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; a party, however, may file a concurrent motion to seal, and the information at issue is sealed pending the outcome of the motion. There is, however, a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because these proceedings determine the patentability of claims in issued patents and, therefore, affect the rights of the public. *See Garmin Int’l v. Cuozzo Speed Techs., LLC*, Case IPR2012-00001, slip op. at 1-3 (PTAB Mar. 14, 2013) (Paper 34) (discussing the standards applied to motions to seal).

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Patent Owner contends that “Exhibit 2082 contains confidential patient information,” as it “references specific clinical data for patients in connection with studies conducted by or through the University of Pennsylvania.” Paper 19, 1. Patent Owner contends that the “public’s interest in accessing this information for the purposes of the patentability of the challenged claims in this proceeding is outweighed by the prejudicial effect that such disclosure would have on Patent Owner, who is required to maintain the privacy of patients treated by or through the University of Pennsylvania.” *Id.* at 1–2.

We agree that Exhibit 2082 appears, on its face, to contain confidential patient information. We are persuaded that Patent Owner shows good cause for redacting sensitive information from that Exhibit. Accordingly, we grant Patent Owner’s Motion to Seal as to Exhibit 2082.

Patent Owner contends that “Exhibits 2057 and 2081 contain confidential business information of Patent Owner (and of Aegerion, Inc., the exclusive licensee of the patent under review in this proceeding) relating to certain clinical trials conducted on lomitapide by Patent Owner or by Bristol-Myers Squibb Company (“BMS”).” Paper 19, 2.

We agree that Exhibits 2057 and 2081 appear, on their face, to contain confidential business information. We are persuaded that Patent Owner shows good cause for redacting the sensitive information from those exhibits. Accordingly, we grant Patent Owner’s Motion to Seal Confidential Exhibits 2057 and 2081.

We would like to note that Petitioner filed a redacted and unredacted copy of its Reply (Papers 30 and 29 in IPR2015-01835, and Papers 32 and 31 in IPR2015-01836). Petitioner also filed Exhibit 1057 in IPR2015-01835

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and Exhibit 1053 in IPR2015-01836 as Board and parties only, and filed both a redacted and unredacted copy of Exhibit 1049 in IPR2015-01835 and Exhibit 1045 in IPR2015-01836. Neither Petitioner nor Patent Owner, however, has filed a corresponding motion to seal the Reply or those exhibits.

37 C.F.R. § 42.14 requires that a “party intending a document or thing to be sealed [to] file a motion to seal concurrent with the filing of the document or thing to be sealed.” As no motion to seal accompanied either the Reply in the proceedings, or the aforementioned exhibits, within 30 days of this Order, either Petitioner or Patent Owner should file a motion to seal the Reply and the exhibits. If no such motion is received, the Reply in its entirety, as well as the above mentioned exhibits, will be made available to the public.

Accordingly, it is:

ORDERED that the parties Motion for Entry of the default protective order into the proceedings is *granted*;

FURTHER ORDERED that Patent Owner’s Motion to Seal Exhibits 2057, 2081, and 2082 is *granted*;

FURTHER ORDERED that either Patent Owner or Petitioner should file a motion to seal Petitioner’s Reply in both proceedings within 30 days of the date of this Order;

FURTHER ORDERED that either Patent Owner or Petitioner should file a motion to seal Exhibits 1049 and 1057 in IPR2015-01835, and Exhibits 1045 and 1049 in IPR2015-01836; and

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FURTHER ORDERED that if no such motion is filed within 30 days of this order, Petitioner's Reply and Exhibits 1049 and 1057 in IPR2015-01835, and Exhibits 1045 and 1049 in IPR2015-01836 will be made public.

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