

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS VIII, LLC

Petitioner

v.

THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA

Patent Owner

Case No. IPR2015-01836

Patent No. 7,932,268

PATENT OWNER'S MOTION TO SEAL

Pursuant to 37 C.F.R. §§ 42.14, 42.54, Patent Owner, The Trustees of the University of Pennsylvania (“Patent Owner”), respectfully moves to seal portions of Petitioner’s Reply and Exhibits 1045 and 1053, which contain confidential business information of Patent Owner. A redacted copy of Exhibit 1053 is being filed herewith. This motion is being filed within 30 days of the March 6, 2017 Order Granting Patent Owner’s Motion to Seal pursuant to 37 C.F.R. §§ 42.14 and 42.54 (Paper 57) (“the Order”). Pursuant to the Order, the Motion for Entry of the default protective order into the proceedings was also entered.

I. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

In determining whether to grant a Motion to Seal, the Board must find “good cause” and “strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” 37 C.F.R. § 42.54(a); 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

As described in the *Office Trial Practice Guide*, the Board 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. 48756, 48760 (Aug. 14, 2012).

Petitioner’s Reply and Exhibits 1045 and 1053 contain confidential business information of Patent Owner (and of Aegerion, Inc., the exclusive licensee of the

patent under review in this proceeding) regarding development of lomitapide by Bristol-Myers Squibb Company (“BMS”). Petitioner’s Reply and Exhibits 1045 and 1053 contain confidential information regarding BMS drug development strategy that is non-public and proprietary to Patent Owner and BMS. Exhibit 1053 additionally contains detailed information regarding the methodology of and summary results from a clinical study conducted by BMS on lomitapide that is non-public and proprietary to Patent Owner. Patent Owner has an interest in keeping this business information confidential because it is sensitive, competitive business information. Again, 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 Patent Owner’s interest in maintaining confidential, proprietary business information.

Petitioner has previously submitted both confidential and redacted versions of Petitioner’s Reply and Exhibit 1045. Further, Patent Owner is submitting herewith a redacted version of Exhibit 1053. The proprietary data and information contained in Petitioner’s Reply and Exhibits 1045 and 1053 is not essential to an understanding of the issues in the Petitioner’s Reply and related exhibits. Indeed, the only information not reflected in the redacted versions of these exhibits is the data described above, to wit, the precise clinical patient data or confidential business information proprietary to the Patent Owner or BMS. In contrast, the

public disclosure of this information requires the Patent Owner to disclose proprietary, confidential information. Accordingly, good cause exists to seal the confidential patient data and business confidential information contained in Petitioner's Reply and Exhibits 1045 and 1053.

The Board did not substantively rely on these documents in its Final Written Decision.

For the foregoing reasons, Patent Owner requests that the Board seals the unredacted versions of Petitioner's Reply and Exhibits 1045 and 1053.

II. CERTIFICATION OF NON-PUBLICATION

To the undersigned counsel's knowledge, the information sought to be sealed by this motion was inadvertently made public via Petitioner's filing of Exhibit 1053 as publicly available as opposed to "Board and Parties only." Petitioner e-mailed the Board on March 21, 2017 requesting an appropriate correction. The information sought to be sealed by this motion has not been published or otherwise made public, except via the inadvertent filing of Exhibit 1053.

III. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37 C.F.R. § 42.54.

Petitioner did not file an opposition to Patent Owner's Motion to Seal as filed on June 7, 2016.

THEREFORE, Patent Owner respectfully requests that the Board grant
Patent Owner's Motion to Seal.

Respectfully submitted,

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