

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERIGEN PHARMACEUTICALS LIMITED and
ARGENTUM PHARMACEUTICALS LLC,
Petitioner,

v.

JANSSEN ONCOLOGY, INC.,
Patent Owner.

Case IPR2016-00286¹
Patent 8,822,438 B2

Before LORA M. GREEN, RAMA G. ELLURU, and
KRISTINA M. KALAN, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

ORDER
Granting Motion to Seal
37 C.F.R § 42.54

¹ Case IPR2016-01317 has been joined with this proceeding.

On January 17, 2017, we entered a Final Written Decision (“Final Decision” or “Final Dec.”) in the above-referenced case. Patent Owner filed a number of documents in this proceeding as “Parties and Board Only,” but no Motion to Seal was visible in the record. Patent Owner also filed a Protective Order (Exhibit 2113) and a Red-line of Protective Order (Exhibit 2114). We ordered Patent Owner to file a motion to seal within ten (10) business days of the entry of the Final Decision. Final Dec. 46–47.

On January 31, 2018, Patent Owner filed a Motion to Seal (Paper 87, “Motion” or “Mot.”), indicating that a Motion to Seal previously had been filed on October 4, 2016, but assigned a “Motion Initiated” status that may not permit the Board to retrieve it. Mot. 1 (citing Ex. 2128). Patent Owner moves to seal the confidential version of the Declaration of Dr. Velturo (Exhibit 2044) and the confidential version of the Declaration of Dr. Rettig (Ex. 2038), as well as Exhibits 2092–94 and 2118. *Id.* Patent Owner states that it filed non-confidential, redacted versions of the Declaration of Dr. Velturo (Exhibit 2115) and the Declaration of Dr. Rettig (Ex. 2119). *Id.* Patent Owner represents that the parties agreed to the modified version of the Default Protective Order submitted as Exhibit 2113, and submitted a redline of the Standing Protective Order as Exhibit 2114. *Id.* at 2.

After having considered the arguments, we determine that Patent Owner establishes good cause for sealing the documents identified in the Motion. Specifically, Patent Owner demonstrates that the information it seeks to seal consists of documents containing non-public research summaries, non-public research and development information, and the testimony that relies on those documents. Mot. 2. Accordingly, the Motion is *granted* and the modified protective order *entered*.

There is an expectation that information will be made public where the information is identified in a final written decision, and that confidential information that is subject to a protective order ordinarily would become public 45 days after final judgment in a trial, unless a motion to expunge is granted. 37 C.F.R. § 42.56; Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012). In rendering our Final Decision, it was not necessary to identify, nor discuss in detail, any confidential information. However, a party who is dissatisfied with the Final Decision may appeal the Decision pursuant to 35 U.S.C. § 141(c), and has 63 days after the date of the Decision to file a notice of appeal. 37 C.F.R. § 90.3(a). Thus, it remains necessary to maintain the record, as is, until resolution of an appeal, if any.

In view of the foregoing, the confidential documents filed in the instant proceeding will remain under seal, at least until the time period for filing a notice of appeal has expired or, if an appeal is taken, the appeal process has concluded. The record for the instant proceeding will be preserved in its entirety, and the confidential documents will not be expunged or made public, pending appeal. Notwithstanding 37 C.F.R. § 42.56 and the Office Patent Trial Practice Guide, neither a motion to expunge confidential documents nor a motion to maintain these documents under seal is necessary or authorized at this time. *See* 37 C.F.R. § 42.5(b).

ORDER

In consideration of the foregoing, it is:

ORDERED that the Motion to Seal is *granted* and the modified protective order *entered*.

IPR2016-00286
Patent 8,822,438 B2

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