

Paper No. ____
Date Filed: July 16, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERIGEN PHARMACEUTICALS LIMITED and
ARGENTUM PHARMACEUTICALS LLC
Petitioners,

v.

JANSSEN ONCOLOGY, INC.

Patent Owner.

Case IPR2016-00286¹
Patent 8,822,438 B2

**PATENT OWNER'S MOTION TO EXPUNGE
UNDER 37 C.F.R. § 42.56**

¹ Case IPR2017-01317 was joined with this proceeding.

I. STATEMENT OF RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.56 and the Board’s email authorization of July 16, 2019, Patent Owner Janssen Oncology, Inc. (“Patent Owner”) respectfully requests that the Board expunge from the record Exhibits 2038, 2044, 2092, 2093, 2094, and 2118—all of which contain Patent Owner’s confidential information—for the reasons set forth below. Patent Owner certifies that the parties have conferred in good faith, and Petitioners do not oppose this motion.

II. BACKGROUND

On January 31, 2018, Patent Owner filed a motion to seal Exhibits 2038 and 2044 (which are the confidential versions of redacted Exhibits 2119 and 2115, respectively), and Exhibits 2092, 2093, 2094, and 2118 (which are confidential in their entirety). *See* Paper 87. All of the aforementioned exhibits contain Patent Owner’s confidential information. On February 13, 2018, the Board granted Patent Owner’s motion to seal. *See* Paper 89. Furthermore, the Board found that “[i]n rendering [its] Final Decision, it was not necessary to identify, nor discuss in detail, any confidential information.” *Id.* at 3. The Board ordered that the exhibits remain under seal until “the time period for filing a notice of appeal has expired or, if an appeal is taken, the appeal process has concluded.” *Id.*

On December 19, 2018, Patent Owner filed a Notice of Appeal. Paper 93.

On May 14, 2019, the United States Court of Appeals for the Federal Circuit (the

“Federal Circuit”) issued its opinion and judgment, and on June 20, 2019, the Federal Circuit issued its mandate.

III. APPLICABLE LEGAL STANDARDS

37 C.F.R. § 42.56 provides that “[a]fter denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.” The Board has previously explained that a party moving to expunge has to show that: i) “any information sought to be expunged constitutes confidential information[;]” and ii) the movant’s interest in expunging the information “outweighs the public’s interest in maintaining a complete and understandable file history.” *RPX Corp. v. VirnetX Inc.*, IPR 2014-00171, Paper 62 at 3 (P.T.A.B. Sept. 9, 2014). The regulations identify confidential information as “a trade secret or other confidential research, development, or commercial information.” 37 C.F.R. § 42.54(a)(7). The Board must 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.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

IV. REASONS FOR THE RELIEF REQUESTED

In its order granting the motion to seal, the Board stated 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.” Paper

89 at 3. Accordingly, Patent Owner moves to expunge from the record the following sealed exhibits containing Patent Owner's confidential information:

- Internal, non-public research summaries concerning the use of Patent Owner's product: Exhibit 2092 (filed October 4, 2016); Exhibit 2093 (filed October 4, 2016); Ex. 2094 (filed October 4, 2016).
- Internal, non-public technical research and development information concerning Patent Owner's product: Exhibit 2118 (filed October 4, 2016).
- Expert declarations and deposition transcripts referring to Patent Owner's confidential information: Declaration of Matthew B. Rettig, M.D., Ex. 2038 (filed October 4, 2016); Declaration of Christopher A. Vellturo, Ph.D., Exhibit 2044 (filed October 12, 2016).

Patent Owner has already demonstrated, and the Board agreed, that Exhibits 2038, 2044, 2092, 2093, 2094, and 2118 contain confidential information. Paper 89 at 2. There has been no change in confidentiality of the information contained in these exhibits. Thus, Patent Owner has met its burden of showing that "any information sought to be expunged constitutes confidential information." *RPX*, IPR2014-00171, Paper 62 at 3.

In addition, Patent Owner's interest in expunging the confidential information in Exhibits 2038, 2044, 2092, 2093, 2094, and 2118 "outweigh[s] the

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public's interest in maintaining a complete and understandable file history." *Id.* As stated in its Final Written Decision, the Board did not "identify, nor discuss in detail" the confidential information when rendering its decision. Paper 89 at 3. The public, therefore, has access to all the materials relevant to the merits of this proceeding, either through publicly filed papers and exhibits or through redacted, public versions of Exhibit 2038 (Declaration of Matthew B. Rettig, M.D. - Exhibit 2119), and Exhibit 2044 (Declaration of Christopher A. Velluro, Ph.D. - Exhibit 2115). Given the confidential nature of the information in Exhibits 2038, 2044, 2092, 2093, 2094, and 2118, good cause exists for the Board to expunge these exhibits pursuant to 37 C.F.R. § 42.56.

V. CONCLUSION

For the reasons set forth above, Patent Owner requests that the Board grant this motion and expunge confidential Exhibits 2038, 2044, 2092, 2093, 2094, and 2118 from the record.

July 16, 2019

Respectfully submitted,

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