

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MYLAN LABORATORIES LIMITED,  
Petitioner

v.

AVENTIS PHARMA S.A.,  
Patent Owner

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Case IPR2016-00712  
Patent 8,927,592 B2

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Before BRIAN P. MURPHY, TINA E. HULSE, and  
CHRISTOPHER M. KAISER, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

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

On December 23, 2016, Patent Owner filed a Motion to Seal Exhibits 2149 (portions of ¶ 29), 2170, 2171, 2176 (portions of ¶¶ 47, 164), 2179, 2182, and 2211, and a Motion for entry of a Stipulated Protective Order. Paper 24 (“Motion” or “Mot.”). Patent Owner additionally filed redacted versions of Exhibit 2149 (“Public Tate Declaration”) and Exhibit 2176 (“Public Sartor Declaration”) that are accessible to the public. Patent Owner also submitted, as Appendix A of the Motion, a proposed Stipulated Protective Order that differs from the Board’s default Protective Order. Petitioner has not filed an opposition to the Motion. Counsel for Patent Owner certifies that he has conferred with counsel for Petitioner and the parties have agreed to the entry of the Stipulated Protective Order in this proceeding. Mot. 8.

The record for an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54. There is a strong public policy that favors making information filed in *inter partes* review proceedings open to the public. *See Garmin Int’l v. Cuozzo Speed Techs., LLC*, Case IPR2012-00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34) (discussing Board standards applied to motions to seal). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). Satisfaction of the burden requires a showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. *See Garmin* at 3.

In the instant case, Patent Owner asserts that the documents to be sealed include highly sensitive business information pertaining to (i) market share of treatments for prostate cancer post-docetaxel, including Jevtana® (Exs. 2149, 2170, 2171, and 2179), and (ii) confidential clinical research information (Exs. 2176, 2182, and 2211). Mot. 3–7. Patent Owner further asserts that, if made public, the aforementioned highly sensitive business information could cause competitive harm to Patent Owner by giving direct competitors knowledge of Patent Owner’s business, marketing, and clinical research operations. *Id.*

After consideration of the Motion, the sealed and redacted (public) documents, and the proposed Stipulated Protective Order, Patent Owner’s Motion is *granted*. We are persuaded that Patent Owner has demonstrated good cause for keeping the identified information under seal, because it relates to highly sensitive and confidential business information of Patent Owner that could cause competitive harm to Patent Owner. Patent Owner has filed public versions of Exhibits 2149 (Tate Declaration) and 2176 (Sartor Declaration) with appropriately limited redactions (Ex. 2149 ¶ 29; Ex. 2176 ¶¶ 47, 164) so as to provide the thrust of Patent Owner’s argument, without compromising the underlying confidential business information. The proposed modifications to the Board’s default Protective Order are minor and tailored to the parties’ particular needs in this proceeding.

The parties are reminded that confidential information subject to a protective order ordinarily becomes public 45 days after final judgment in a trial. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Col. 1) (Aug. 14, 2012). There is an expectation that information will be made

public where the existence of the information is identified in a final written decision following a trial. *Id.* After final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public. *See* 37 C.F.R. § 42.56.

In consideration of the foregoing, it is:

ORDERED that Patent Owner's Motion is *granted* and that Patent Owner shall file the Stipulated Protective Order as a paper in this proceeding;

FURTHER ORDERED that the following Exhibits shall be sealed as "Parties and Board Only": Exhibits 2149 (Confidential Tate Declaration), 2170, 2171, 2176 (Confidential Sartor Declaration), 2179, 2182, and 2211.<sup>1</sup>

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<sup>1</sup> Patent Owner has filed the identified exhibits as "Filing Party and Board Only." Upon entry of the Stipulated Protective Order, Patent Owner shall change the filing status of the identified exhibits to "Parties and Board Only."

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Patent 8,927,592 B2

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