

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN LABORATORIES LIMITED,
Petitioner

v.

AVENTIS PHARMA S.A.,
Patent Owner.

Case IPR2016-00712
Patent 8,927,592 B2

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

MURPHY, *Administrative Patent Judge*.

DECISION
On Motions to Seal
37 C.F.R. §§ 42.14

On February 10, 2017, we granted Patent Owner’s Motion to Seal Exhibits 2149 (portions of ¶ 29), 2170, 2171, 2176 (portions of ¶¶ 47, 164), 2179, 2182, and 2211. Paper 35. We stated 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. *Id.* at 3. 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.

We ordered Patent Owner to file the Stipulated Protective Order to which the parties had agreed. Paper 35, 3. Patent Owner filed the so-ordered Stipulated Protective Order on February 15, 2017. Paper 36.

The parties subsequently filed a series of papers and exhibits under seal, with accompanying motions to seal and redacted public versions, in accordance with the terms of the Stipulated Protective Order. The motions are uncontested except for one motion to seal, addressed separately below.

The following chart summarizes the motions to seal and the confidential papers and exhibits that are the subject of the motions.

| Motion to Seal Paper Number | Description | Papers and Exhibits Subject to Sealing |
|-----------------------------|--|--|
| 45 | Petitioner’s Motion to Seal Opposition to Contingent Motion to Amend (“MTA”) | Paper 43 (MTA Opp.) Ex. 1042 (Tate Depo. Tr.) Ex. 1043 (Seth Reply Dec.), Ex. 1044 (McSorley Dec.), Ex. 1054, Ex. 1065, |

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| | | Exs. 1069–1072, Ex. 1074, Ex. 1079, and Exs. 1089–1090 |
| 54 | Patent Owner’s Motion to Seal MTA Reply and Ex. 2258 | Paper 53 (MTA Reply) Ex. 2258 (Seth Depo. Tr. April 14, 2017 (referencing sealed Ex. 2182)) |
| 56 | Patent Owner’s Motion to Seal Ex. 2211 | Ex. 2211 (FDA Meeting Minutes of June 28, 2006 meeting with Sanofi-Aventis) |
| 62 | Patent Owner’s Motion to Seal Ex. 2261 | Ex. 2261 (McSorley Depo. Tr. April 19, 2017) |
| 65 | Petitioner’s Motion to Seal Petitioner’s Motion to Exclude Evidence | Paper 64 (referencing Ex. 1042 (Tate Depo. Tr.) and Ex. 2261 (McSorley Depo. Tr.)) |
| 74 | Patent Owner’s Motion to Seal Patent Owner’s Opp. to Petitioner’s Motion to Exclude. | Paper 72 (referencing Exs. 1042 (Tate Depo. Tr.), 2149, 2170–2171, 2179, and 2261 (McSorely Depo. Tr.)) |
| 76 | Petitioner’s Motion to Seal Petitioner’s Opp. To Patent Owner’s Mot. To Exclude Exs. 1089 and 1090 | Paper 77 (referencing Ex. 1042 (Tate Depo.) and Ex. 1044 (McSorley Dec.)) |
| 83 | Patent Owner’s Motion to Seal Patent Owner’s Observations on Cross- Examination of Robert McSorley | Paper 81 (referencing Ex. 1044 (McSorley Dec.) and Ex. 2261 (McSorley Depo. Tr.)) |
| 88 | Petitioner’s Motion to Seal Reply in Support of Motion to Exclude Evidence | Paper 89 (referencing Ex. 1042 (Tate Depo. Tr.) and Papers 64 and 72) |

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| 91 | Petitioner's Motion to Seal Petitioner's Response to Patent Owner's Observations on Cross-Examination of Robert McSorely | Paper 92 (referencing Ex. 1044 (McSorley Dec.), Ex. 1065, Ex. 1068, Ex. 1071, and Ex. 2261 (McSorley Depo. Tr.)) |
| 97 | Patent Owner's Brief in Support of Petitioner's Motion to Seal Patent Owner's Confidential Information (Paper Nos. 45, 65, 76, 88, 91) | |

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, if made public, the aforementioned highly sensitive business information could cause competitive harm to Patent Owner. Paper 97, 5.

A. Uncontested Motions to Seal

On March 14, 2017, Petitioner moved to seal its Opposition to Patent Owner's Contingent Motion to Amend (Paper 43) and the Reply Declaration of Dr. Rahul Seth (Exhibit 1043) because the documents discuss sealed Exhibit 2182. Paper 45 at 3-4. Petitioner moved to seal Exhibit 1054 because it was produced and designated by Patent Owner as confidential and relates to FDA meeting minutes that were previously sealed (Exhibit 2211). *Id.* at 5. Petitioner also moved to seal the transcript of the deposition of Mr. Michael E. Tate (Exhibit 1042), whose previous declaration was sealed (Exhibit 2149), because the transcript discusses Patent Owner's confidential business information. *Id.* at 4. Petitioner moved to seal Exhibits 1065, 1068-1072, 1074, and 1079 because they were produced and designated confidential by Patent Owner and are of "substantially similar character" to previously sealed Exhibits 2170 and 2179. *See id.* at 2, 5. Accordingly, Petitioner also moved to seal the Declaration of Mr. Robert McSorley (Exhibit 1044) because it discusses "highly sensitive business information" of Patent Owner in Exhibits 1065, 1068-1072, 1074, and 1079. *See id.* at 2, 4-5.

On May 2, 2017, Patent Owner filed a motion to seal the transcript of the deposition of Mr. McSorley (Exhibit 2261) because, *inter alia*, the transcript discusses Patent Owner's confidential business information from internal marketing documents. Paper 62, 2-3. Also on May 2, 2017, Petitioner filed a motion to seal its Motion to Exclude Evidence (Paper 64) because the motion discusses the deposition transcripts of Mr. Tate and Mr. McSorley, both of which have been designated confidential and are the subject of motions to seal. Paper 65, 1. The parties subsequently exchanged redactions to the deposition transcripts of Mr. Tate and Mr. McSorley, with

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