

Filed on behalf of: Aventis Pharma S.A.

By:

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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
U.S. Patent No. 8,927,592

**PATENT OWNER'S MOTION TO
PRESERVE THE RECORD PENDING APPEAL**

Pursuant to the Board's authorization on November 6, 2017, Patent Owner Aventis Pharma S.A. ("Aventis") respectfully requests that the entire docket in IPR2016-00712 be preserved pending a possible appeal to the Federal Circuit Court of Appeals, including preservation of all sealed documents in a non-public form. In addition, Patent Owner respectfully requests that the deadline to file a motion to expunge under 37 C.F.R. § 42.56 be extended to 45 days from the conclusion of any and all appeals in this proceeding. Petitioner Mylan Laboratories Ltd. does not oppose this motion.

I. Background

On February 10, 2017, the Board granted Aventis's uncontested motion for entry of a stipulated protective order and motion to seal certain exhibits. (Paper 35). Aventis filed the Stipulated Protective Order on February 15, 2017. (Paper 36). The parties subsequently filed numerous 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 Board issued a decision on the remaining motions to seal on September 26, 2017. (Paper 100). The parties' motions to seal were uncontested with the exception of one, and only one of Aventis's requests to seal was denied. (Paper 100 at 2, 8-9). The Board found good cause existed to seal the papers and exhibits identified in the table below because they contained confidential business information of Aventis or Petitioner,

and public versions, where feasible, were filed so as to provide the thrust of the arguments without compromising the underlying confidential information. (Paper 35 at 3; Paper 100 at 2, 5-8).

Papers and Exhibits Under Seal	Motion(s) to Seal	Decision Granting Motion to Seal
Ex. 2149 (portions) Ex. 2170 Ex. 2171 Ex. 2176 (portions) Ex. 2179 Ex. 2182 Ex. 2211	Paper 24	Papers 35, 100
Paper 43 (portions) Ex. 1042 (portions) Ex. 1043 (portions) Ex. 1044 (portions) Ex. 1054 Ex. 1065 Ex. 1068 ¹ Ex. 1069 Ex. 1070 Ex. 1071 Ex. 1072 Ex. 1074	Papers 45, 97	Paper 100

¹ The chart on pages 2-4 of the Board’s Decision on Motions to Seal does not list Ex. 1068 as an “Exhibit Subject to Sealing.” (Paper 100 at 2-4). However, elsewhere in the decision, the Board notes that Petitioner “moved to seal Exhibits 1065, 1068-1072.” (Paper 100 at 5). Petitioner’s relevant motion to seal listed “Confidential Exhibit EX1068,” (Paper 45 at 2), and Patent Owner’s Brief in Support of Petitioner’s Motions to Seal Patent Owner’s Confidential Information addressed Ex. 1068 as well. (Paper 97 at 1, 3, 5, 7-8). Aventis therefore understands the Board’s Decision on Motions to Seal to include Ex. 1068. (Paper 100 at 6-7 finding “good cause for sealing documents identified in the uncontested motions to seal,” including Paper 45).

Papers and Exhibits Under Seal	Motion(s) to Seal	Decision Granting Motion to Seal
Ex. 1079 Ex. 1089 Ex. 1090		
Paper 53 (portions)	Paper 54	Paper 100
Ex. 2211 (portions)	Paper 56	Paper 100
Ex. 2261 (portions)	Paper 62	Paper 100
Paper 64 (portions)	Papers 65, 97	Paper 100
Paper 72 (portions)	Paper 74	Paper 100
Paper 77 (portions)	Paper 76, 97	Paper 100
Paper 81 (portions)	Paper 83	Paper 100
Paper 89 (portions)	Papers 88, 97	Paper 100
Paper 92 (portions)	Papers 91, 97	Paper 100

II. The Record Should Be Preserved Pending Appeal

Sealed information subject to a protective order will ordinarily become public 45 days after final judgment in a trial unless a motion to expunge is filed. Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48761; *see also* 37 C.F.R. § 42.56. Here, the date 45 days after the Final Written Decision was entered is November 6, 2017. However, Patent Owner has until November 24, 2017, or 63 days from the Final Written Decision pursuant to 37 C.F.R. § 90.3(a)(1) to file a

notice of appeal. Thus, the deadline for a motion to expunge falls before the deadline for a notice of appeal.

The Federal Rules of Appellate Procedure and the Federal Circuit Rules require that the record be retained by the Board pending appeal. Specifically Federal Circuit Rule 17(a) states that “[t]he agency must retain the record.” Federal Circuit Rule 17(d) requires that counsel for the parties have access to both the sealed and unsealed portions of the record once a “notice of appeal is filed.” Federal Circuit Rule 17(e) states that “any portion of the record that was subject to a protective order in an agency shall remain subject to that order on appeal.”

If the record is not preserved in its entirety, including any sealed portions, and an appeal is taken, the Federal Circuit may not be able to fully consider the issues discussed in the Final Written Decision, which would cause prejudice to the parties and violate the appellate rules. Extending the deadline to file a motion to expunge sealed information from this IPR accommodates the need to preserve the entire docket for appeal and the interests of Aventis in protecting from public disclosure its confidential information that the Board has already agreed to seal. The Board has previously granted similar requests. *Arctic Cat, Inc. v. Polaris Indus., Inc.*, IPR2014-01427, Paper 62 at 2-3 (P.T.A.B. Mar. 8, 2016) (preserving record and extending deadline under 37 C.F.R. § 42.56 until 45 days from the filing of the mandate from appeal).

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