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Filed on behalf of: Aventis Pharma S.A.

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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 BRIEF IN SUPPORT OF PETITIONER'S MOTIONS
TO SEAL PATENT OWNER'S CONFIDENTIAL INFORMATION
(PAPERS 45, 65, 76, 88, 91)**

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, and for the reasons set forth below, Patent Owner Aventis Pharma S.A. (“Aventis”) respectfully requests that the Board grant Petitioner’s motions to seal the following documents as set forth in Papers 45, 65, 76, 88, and 91:

- Petitioner’s Opposition to Patent Owner’s Contingent Motion to Amend (Paper 43),
- Exhibit 1042 (transcript of the deposition of Michael E. Tate),
- Exhibit 1043 (Reply Declaration of Dr. Rahul Seth),
- Exhibit 1044 (Declaration of Mr. Robert McSorley),
- Exhibit 1054 (Jevtana[®] FDA submission),
- Exhibits 1065, 1068-1072, 1074, 1079 (Jevtana[®] marketing documents),
- Petitioner’s Motion to Exclude Evidence (Paper 64),
- Petitioner’s Opposition to Patent Owner’s Motion to Exclude Exhibits 1089-1090 (Paper 77),
- Petitioner’s Reply in Support of Motion to Exclude Evidence (Paper 89),
and
- Petitioner’s Response to Patent Owner’s Motion for Observations on the Cross-Examination of Mr. Robert McSorley (Paper 92).

II. GOOD CAUSE EXISTS FOR SEALING THE REQUESTED INFORMATION

Documents filed in an IPR are generally available to the public. 37 C.F.R. § 42.14. However, the Board may, for good cause, protect confidential information from public disclosure. *Id.*; see also *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 36 at 3-4 (P.T.A.B. Apr. 5, 2013).

When determining good cause, the Board must balance the public's interest in a complete and understandable file history with the party's interest in protecting sensitive information. See *Garmin*, IPR2012-00001, Paper 36 at 3-4 (citing Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (2012)). However, the public's interest in having access to a party's confidential business or clinical research information that is only indirectly related to patent validity is "minimal." *Id.* at 8-9 (granting the patent owner's motion to seal an agreement relating to the "commercializ[ation]" of the patent-at-issue). Here, the interests in protecting business, financial, and clinical research information outweigh the public's interest in viewing that information.

a. Background

The Board granted Aventis's unopposed motion for entry of a protective order and motion to seal Exhibits 2149, 2170, 2171, 2179, 2182, and 2211 on February 10, 2017 because the exhibits contained "highly sensitive and confidential business information of Patent Owner." (Paper 35 at 1, 3). Aventis

filed the Stipulated Protective Order on February 15, 2017. (Paper 36).

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 Aventis 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 Aventis'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 Aventis 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 Aventis in Exhibits 1065, 1068-1072, 1074, and 1079. (*See id.* at 2, 4-5).

On May 2, 2017, Aventis filed a motion to seal the transcript of the deposition of Mr. McSorley (Exhibit 2261) because, *inter alia*, the transcript discusses Aventis's confidential business information from internal marketing documents. (Paper 62 at 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 at 1). The parties subsequently exchanged redactions to the deposition transcripts of Mr. Tate and Mr. McSorley, with public versions of those documents being filed on May 9-10, 2017. (Papers 69-70).

On May 12, 2017, both parties filed motions to seal their respective oppositions to the motions to exclude evidence (Papers 72, 77) because they discuss Mr. Tate's declaration (Exhibit 2149), Mr. Tate's deposition testimony (Exhibit 1042), Mr. McSorley's declaration (Exhibit 1044), Mr. McSorley's deposition testimony (Exhibit 2261), previously sealed Exhibits 2170-71 and 2179, and/or other documents produced by Aventis under the Stipulated Protective Order. (Paper 74 at 3-4; Paper 76 at 1). On May 19, 2017, Petitioner moved to seal its Reply in Support of Motion to Exclude Evidence (Paper 89) because it discusses Mr. Tate's deposition testimony (Exhibit 1042), Petitioner's Motion to Exclude Evidence (Paper 64), and Aventis's opposition thereto (Paper 72), all of which are subject to pending motions to seal. (Paper 88 at 1).

On May 15, 2017, Aventis filed a motion to seal its Motion for Observations on the Cross-Examination of Mr. Robert McSorley (Paper 81) because it discusses deposition testimony of Mr. McSorley (Exhibit 2261) and his declaration (Exhibit

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