

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 SEAL AND MOTION TO ENTER
STIPULATED PROTECTIVE ORDER**

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 seal Patent Owner’s Exhibits 2170, 2171, 2179, 2182, 2211 and portions of Exhibit 2149 (December 23, 2016 Expert Declaration of Michael E. Tate (“Tate Declaration”)) and Exhibit 2176 (December 23, 2016 Expert Declaration of Alton Oliver Sartor (“Sartor Declaration”)). Aventis further requests entry of the proposed Stipulated Protective Order (Appendix A, attached below).

Aventis submits concurrently with this motion to seal the following:

- (i) Confidential Exhibit 2170;
- (ii) Confidential Exhibit 2171;
- (iii) Confidential Exhibit 2179;
- (iv) Redacted version of Exhibit 2149 (Tate Declaration);
- (v) Confidential version of Exhibit 2149 (Tate Declaration);
- (vi) Confidential Exhibit 2182;
- (vii) Confidential Exhibit 2211;
- (viii) Redacted version of Exhibit 2176 (Sartor Declaration);
- (ix) Confidential version of Exhibit 2176 (Sartor Declaration);
- (x) Stipulated Protective Order (Appendix A, attached below); and
- (xi) Redlined Default Protective Order (Appendix B, attached below).

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. 37 C.F.R. § 42.14; *see also Garmin Int'l v. Cuzzo Speed Tech., LLC*, IPR2012-00001, Paper 36 at 3-4 (PTAB Apr. 5, 2013). Where possible, parties should redact sensitive information from their filings, rather than seek to seal entire documents. Office Trial Practice Guide, 77 Fed. Reg. 48756, 48761 (2012).

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, 3-4 (citing Office Trial Practice Guide, 77 Fed. Reg. at 48760). 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 Patent Owner's interests in protecting its confidential business and clinical research information outweighs the public's interest in viewing that information.

a. Background

Aventis and Petitioner Mylan Laboratories Limited (“Mylan”) are also currently litigating the patent-at-issue in this IPR before the United States District Court for the District of New Jersey in *Sanofi-Aventis U.S. LLC v. Mylan Laboratories Limited*, Civil Action No. 3-15-cv-03392-MAS-LHG (“the Litigation”). The Court has entered a protective order in the Litigation.

b. Exhibits 2170 and 2179

Aventis seeks to seal Exhibit 2170, which is a document that includes confidential business data that compares the market share of treatments for prostate cancer post-docetaxel, including Jevtana®. Aventis also seeks to seal Exhibit 2179, which is the underlying business data that is used to generate the charts in Exhibit 2170. The information was privately commissioned from the data analysis company AlphaImpact Rx under their BrandImpact product line, and is relied on for business and marketing strategy. *See* Exh. 2231 at ¶¶ 2-3.

Aventis seeks to maintain the confidentiality of Exhibits 2170 and 2179 because they contain highly sensitive business information. If this information is made public, it could cause competitive harm to Aventis by giving direct competitors knowledge of Aventis’s business and marketing operations.

In addition, the public version of Exhibit 2149 (Tate Declaration), which relies in part on Exhibits 2170 and 2179, has been written so that the thrust of the

underlying argument can still be reasonably discerned. *Greene's Energy Grp., LLC, Inc. v. Oil States Energy Svcs., LLC*, IPR 2014-00216, Paper 27 at 5 (PTAB Sept. 23, 2014). Accordingly, the public's interest in knowing Aventis's business information is relatively low, and is outweighed by Aventis's interest in keeping it confidential.

c. Exhibit 2171

Aventis seeks to seal Exhibit 2171, which is a document that includes confidential business data that compares the market share of treatments for prostate cancer post-docetaxel, including Jevtana®. The information was privately commissioned from the data analysis company AlphaImpact Rx (a subsidiary of Symphony Health Solutions) under their BrandImpact product line, and is relied on for business and marketing strategy. *See* Exh. 2231 at ¶¶ 2-3.

Aventis seeks to maintain the confidentiality of Exhibit 2171 because it contains highly sensitive business information. If this information is made public, it could cause competitive harm to Aventis by giving direct competitors knowledge of Aventis's business and marketing operations.

In addition, the public version of Exhibit 2149 (Tate Declaration), which relies in part on Exhibit 2171, has been written so that the thrust of the underlying argument can still be reasonably discerned. *Greene's Energy Grp., LLC, Inc.*, IPR 2014-00216, Paper 27 at 5. Accordingly, the public's interest in knowing Aventis's

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