

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

MYLAN PHARMACEUTICALS INC., TEVA PHARMACEUTICALS USA,
INC., and AKORN INC.,¹
Petitioners,

v.

ALLERGAN, INC.,
Patent Owner.

Case IPR2016-01127 (8,685,930 B2)
Case IPR2016-01128 (8,629,111 B2)
Case IPR2016-01129 (8,642,556 B2)
Case IPR2016-01130 (8,633,162 B2)
Case IPR2016-01131 (8,648,048 B2)
Case IPR2016-01132 (9,248,191 B2)

PATENT OWNER'S MOTION TO SEAL

¹ Cases IPR2017-00576 and IPR2017-00594, IPR2017-00578 and IPR2017- 00596, IPR2017-00579 and IPR2017-00598, IPR2017-00583 and IPR2017- 00599, IPR2017-00585 and IPR2017-00600, and IPR2017-00586 and IPR2017-00601 have respectively been joined with the captioned proceedings. The word-for-word identical paper is filed in each proceeding identified in the caption pursuant to the Board's Scheduling Order (Paper 10).

I. INTRODUCTION

On November 9, 2017, the Board issued an Order on the Conduct of the Proceedings instructing the parties to confer as to whether any information in Exhibits 2086, 2087, and Paper 86 should be treated as confidential. The Board also ordered that after this conference the Saint Regis Mohawk Tribe (“Tribe”) may file a motion to seal with a showing of good cause as to why the information constitutes confidential information. The parties conferred on November 15, 2017 and agree that Paper 86 may be unsealed in its entirety.

The Tribe files this motion asking that certain confidential portions of Exhibits 2086 and 2087 remain under seal. The Tribe has filed redacted versions of Exhibits 2086 and 2087 with this motion.

Petitioners do not oppose the relief sought in this motion.

II. STATEMENT OF PRECISE RELIEF REQUESTED

Under 37 C.F.R. § 42.14, Patent Owner respectfully submits redacted versions of Exhibits 2086 and 2087 because the redacted portions of these documents contain confidential information that was not relied upon by either party in any of the briefs related to Patent Owner’s Motion to Dismiss.

III. GOOD CAUSE EXISTS FOR SEALING THE REDACTED CONFIDENTIAL INFORMATION

There is a strong public policy that favors making information filed in an *inter partes* review open to the public. *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*,

IPR2012-00001, slip op. 1-2 (PTAB Mar. 14, 2013) (Paper 34). The standard for granting a motion to seal is good cause. 37 C.F.R. § 42.14.

Exhibits 2086 and 2087 are the Long-Form Assignment Agreement and License Agreement between Patent Owner, Saint Regis Mohawk Tribe and Allergan. These agreements contain confidential commercial information pertaining to the business of Patent Owner and Allergan. Both Agreements contain Confidentiality and Non-Disclosure Clauses that prohibit disclosure unless made in response to a valid court order. EX. 2086 at §5(d)(1); EX. 2087 at 6.3.1. Nevertheless, Patent Owner seeks to seal only a few provisions of Exhibits 2086 and 2087, which fall into the three categories discussed below.

First, Patent Owner seeks to seal information regarding the resolution of disputes between Patent Owner and Allergan related to the agreements. These provisions are important to Patent Owner's competitive standing during patent licensing negotiations. Declaration of Dale White at ¶ 5. If made public, this information would provide a third party attempting to negotiate with either Patent Owner or Allergan a road map regarding dispute resolution issues, and therefore, an unfair advantage in future negotiations. Patent Owner thus respectfully requests that paragraph 11.a. of Exhibit 2086 and paragraphs 8.1, 8.2, and 10.7 of Exhibit 2087 remain sealed.

Second, Patent Owner seeks seal information related to confidential settlement

agreements between Allergan and third parties. Those settlement agreements between Allergan and other parties are confidential business information of Allergan and those third parties. Moreover, they are ancillary to the matter at hand and do not relate to the issues of tribal sovereign immunity that are at issue here. Patent Owner thus respectfully requests that paragraphs 3.b. and 3.c., and Schedule 3a of Exhibit 2086, and Schedule 1.43 of Exhibit 2087 remain sealed.

Finally, Patent Owner respectfully requests that the bank and routing information for the payment under the License Agreement, paragraph 4.1 of exhibit 2087, be sealed. To be clear, Patent Owner is not requesting sealing of the entirety of paragraph 4.1, but instead only requests that the bank account information be kept under seal. That information is not relevant to any claim or issue here, and could be highly damaging if made public.

Moreover, the redacted portions do not materially detract from any material understanding of the public record because neither party cited to or quoted from any of the redacted portions in any of the briefs concerning the Tribe's Motion to Dismiss. *Id.* at ¶ 9. Additionally, none of the redacted provisions relate to the tribal sovereign immunity at issue before the Board. Thus, the redactions to Exhibits 2086 and 2087 are limited only to what is necessary to protect confidential information and do not detract from any material understanding of the public record because neither party quoted the redacted portions. Accordingly, good cause

exists for sealing the redacted portions of Exhibits 2086 and 2087.

IV. CONCLUSION

For the foregoing reasons the Board should find that good cause exists to seal the redacted portions of Exhibits 2086 and 2087.

Dated: November 16, 2017

Respectfully submitted,

/Alfonso Chan /

Alfonso Chan

Reg. No. 45,964

achan@shorechan.com

Michael Shore*

mshore@shorechan.com

Christopher Evans*

cevans@shorechan.com

SHORE CHAN DEPUMPO LLP

901 Main Street, Suite 3300

Dallas, TX 75201

Tel: (214) 593-9110

Fax: (214) 593-9111

Marsha Schmidt*

Attorney at Law

14928 Perrywood Drive

Burtonsville, MD 20866

marsha@mkschmidtlaw.com

Tel: (301) 949-5176

*admitted pro hac vice

Attorneys for Saint Regis Mohawk Tribe

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