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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner,

v.

GENENTECH, INC.,
Patent Owner.

Cases IPR2016-01694
Patent 6,407,213

PATENT OWNER'S MOTION TO SEAL

STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Genentech, Inc. respectfully requests that the Board seal Exhibits 2001 (Notebook 10098 (Leonard Presta)), 2002 (Notebook 10823 (Leonard Presta)), 2003 (Notebook 11268 (Paul Carter)), 2004 (Notebook 11643 (Paul Carter)), 2005 (Notebook 10840 (John Brady)), 2006 (Notebook 11162 (John Brady)), 2007 (Excerpts from Notebook 11008 (Ann Rowland)), 2008 (Excerpts from Notebook 11297 (Tim Hotaling)), 2009 (Excerpts from Notebook 11568 (Monique Carver)), 2010 (Interoffice Memorandum from Paul Carter to Leonard Presta and Dennis Henner dated Mar. 8, 1990), 2011 (Interoffice Memorandum from Paul Carter to Leonard Presta dated Apr. 20, 1990), 2012 (Synthetic DNA Requests dated Mar. 9, 1990), 2013 (Synthetic DNA Requests dated Apr. 3, 1990), 2014 (Protein Engineering of 4D5: Status 5/14/90), 2015 (RCC Meeting Minutes dated Aug. 8, 1990), 2018 (Declaration of John Ridgway Brady), 2029 (Declaration of Dr. Leonard G. Presta), and 2030 (Declaration of Dr. Paul J. Carter).

REASONS FOR RELIEF REQUESTED

Although “the default rule is that all papers filed in an *inter partes* review are open and available for access by the public,” a party may file a motion with the Board to seal confidential information that is protected from disclosure. *Garmin v. Cuozzo*, IPR2012-00001, Paper No. 36. “The standard for granting a motion to

seal is ‘for good cause.’” *Id.* (quoting 37 C.F.R § 42.54). The *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012), states that the “rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure (“FRCP”) 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.”

The parties have conferred and agreed to the provisions of the Modified Default Standing Protective Order set forth in Exhibit 2031, and have stipulated to be bound to the terms set forth therein. Exhibit 2017 shows the proposed modifications from the Default Standing Protective Order, to which the parties have stipulated, in redline.¹ The Modified Default Standing Protective Order provides:

Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together

¹ In IPR2015-01624, to which Genentech Inc. was a party, the parties stipulated to an identical modified default standing protective order, and Patent Owners filed the modified protective order on the record concurrently with a Motion to Seal. *See* IPR2015-01624, Paper No. 28, Exhibits 2137-38. The proceeding was terminated before the Board ruled on the Motion to Seal or the proposed modified default standing protective order.

with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. The nonconfidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(Ex. 2031, Modified Default Standing Protective Order and Patent Owner's Certification of Agreement to Terms, at 3.)

Exhibits 2001-2009 are laboratory notebooks authored by several Genentech scientists. Exhibits 2001-2009 contain information pertaining to each scientist's work product during the course of his or her employment at Genentech, and are therefore "confidential research [and] development . . . information" pursuant to FRCP 26(c)(1)(G).

Exhibits 2010-2015 are internal communications within Genentech pertaining to confidential research and development activities being conducted by scientists at Genentech, and are therefore "confidential research [and] development . . . information" pursuant to FRCP 26(c)(1)(G). Furthermore, Exhibit 2015 was marked "CONFIDENTIAL" internally by Genentech.

Exhibits 2018, 2029, and 2030 are declarations by three Genentech scientists pertaining to confidential research and development activities related to the invention described and claimed in U.S. Patent No. 6,407,213. The redacted portions of Exhibits 2018, 2029, and 2030 contain “confidential research [and] development . . . information” pursuant to FRCP 26(c)(1)(G).

Patent Owner therefore respectfully requests that the aforementioned materials remain under seal pursuant to the Proposed Modified Default Standing Protective Order.

Respectfully Submitted,

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