

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACRUX DDS PTY LTD., ACRUX LIMITED, and
ARGENTUM PHARMACEUTICALS LLC,
Petitioners,

v.

KAKEN PHARMACEUTICAL CO., LTD. and
VALEANT PHARMACEUTICALS INTERNATIONAL, INC.,
Patent Owner.

Case: IPR2017-00190¹
U.S. Patent No. 7,214,506

**PATENT OWNER'S MOTION TO SEAL
PATENT OWNER'S OPPOSITION TO
PETITIONERS' MOTION TO EXCLUDE EVIDENCE**

¹ Case IPR2017-01429 has been joined with the instant proceeding.

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I. Introduction and Statement of Relief Requested

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Kaken Pharmaceutical Co., Ltd. and Valeant Pharmaceuticals International, Inc. (collectively “Patent Owner”) respectfully move to seal portions of “Patent Owner’s Opposition to Petitioners’ Motion to Exclude Evidence Submitted by Patent Owner Under 37 C.F.R. § 42.64(c)” (the “Opposition”), which is filed concurrently herewith.

Good cause to seal portions of the Opposition exists because those portions include discussions of confidential and proprietary sales and commercial market information of Kaken and Valeant, which Patent Owner and Petitioners have previously moved to seal. (Paper No. 25 (addressing Exhibits 2093-2095, 2099, and 2099); Paper No. 36 (addressing Mr. Thomas’s deposition transcript (Exhibit 1507), Mr. Staines’s Declaration (Exhibit 1511), and Exhibit 1663); Paper No. 50 (addressing Petitioner’s Motion to Exclude); and Paper No. 59 (addressing Mr. Staines’s deposition transcript (Exhibit 2116A).) Patent Owner maintains that this information is commercially sensitive, non-public information that only retains its value when treated in accordance with laws that protect such confidential information (*e.g.*, trade secret law). Both Kaken and Valeant restrict the use of their respective confidential information to avoid public disclosure. Accordingly, Patent Owner files this motion to protect certain confidential information from

public disclosure, while allowing the parties access to that information in this proceeding.

II. Standard for Granting a Motion to Seal

A motion to seal may be granted for good cause. 37 C.F.R. § 42.54. To determine whether good cause exists, the Board must “strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34, at 2 (PTAB Mar. 14, 2013) (quoting *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012)). To that end, only “confidential information” may be sealed. 35 U.S.C. § 316(a)(7) (“The Director shall prescribe regulations . . . providing for protective orders governing the exchange and submission of confidential information”); *Garmin Int’l*, IPR2012-00001, Paper 34, at 2. The *Office Trial Practice Guide* defines confidential information as follows:

Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.
§ 42.54.

77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

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