

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

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

v.

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

---

Case IPR2017-00190<sup>1</sup>  
Patent 7,214,506 B2

---

Before ERICA A. FRANKLIN, SUSAN L. C. MITCHELL, and  
ROBERT A. POLLOCK, *Administrative Patent Judges*.

MITCHELL, *Administrative Patent Judge*.

DECISION  
Motions to Seal  
*37 C.F.R. §§ 42.1 and 42.54*

---

<sup>1</sup> Case IPR2017-01429 has been joined with the instant proceeding.

Kaken Pharmaceutical Co., Ltd. and Valeant Pharmaceuticals International, Inc. (collectively, “Patent Owner”) filed three motions to seal. *See* Papers 25, 59, 72. Acrux DDS PTY Ltd. and Acrux Limited (collectively, “Petitioner”) filed four motions to seal. *See* Papers 36, 50, 62, 77. Both parties request entry of the Board’s default protective order. *See* Paper 25, 1, 1 n.1; Paper 36, 2. None of the motions is opposed.

We grant the parties’ request to enter the default protective order. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,771 (2012) (Appendix B: Standing Protective Order). Additionally, as discussed below, we grant each motion to seal.

#### *Discussion*

The Board’s standards for granting motions to seal are discussed in *Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001 (PTAB Mar. 14, 2013) (Paper 34). In summary, there is a strong public policy for making all information filed in *inter partes* review proceedings open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. *Id.* at slip op. 1–2. Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; a party, however, may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. It is only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7); *see* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a). The party moving to seal bears the burden of proof in showing entitlement to the

requested relief, and must explain why the information sought to be sealed constitutes confidential information. 37 C.F.R. § 42.20(c).

We remind the parties of the expectation that confidential information relied upon or identified in a final written decision will be made public. *See* Office Trial Practice Guide, 77 Fed. Reg. 48756, 48761 (Aug. 14, 2012). Confidential information that is subject to a protective order ordinarily becomes public 45 days after final judgment in a trial. A party seeking to maintain the confidentiality of the information may file a motion to expunge the information from the record prior to the information becoming public. 37 C.F.R. § 42.56.

*1. Patent Owner's Motions to Seal (Papers 25, 59, 72)*

Patent Owner moves to seal Exhibits 2093–2095, 2098, and 2099 in their entirety because these exhibits contain select sales and prescription data that constitute Patent Owner's confidential commercial and financial information, which is not publicly available. *See* Paper 26, 3–5.

Patent Owner also moved to seal portions of the deposition transcript of Mr. Staines, Exhibit 2116 (unredacted version), in which confidential and proprietary sales and commercial market information of Patent Owner was discussed. *See* Paper 59, 1. 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 . . . .” *Id.* Patent Owner filed also a redacted, public version of Mr. Staines' deposition. *See* Ex. 2116 (redacted version).

Additionally, Patent Owner seeks 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),” Paper 69 (unredacted version)

(hereinafter, “Opposition”). Paper 72, 1. Patent Owner submits that these portions of its Opposition discuss confidential and proprietary sales and commercial market information of Patent Owner. *Id.* Patent Owner filed also a redacted, public version of its Opposition. *See* Paper 70.

We have considered Patent Owner’s arguments for sealing Exhibits 2093–2095, 2098, and 2099, portions of Mr. Staines’ deposition transcript, portions of Patent Owner’s Opposition, and the information sought to be sealed by Patent Owner. We determine that Patent Owner has demonstrated good cause for its request.

Patent Owner’s motions to seal are granted. If the final written decision in this proceeding substantively relies on information in a sealed document, the document will be unsealed by an Order of the Board. If any sealed document contains information that is not substantively relied on in the final written decision, the sponsoring party may file a motion to expunge that document from the official record. *See* 37 C.F.R. § 42.56.

2. *Petitioner’s Motions to Seal (Papers 36, 50, 62, 77)*

Petitioner filed a motion to seal portions of Exhibit 1506 (unredacted version), Dr. Tatsumi’s deposition transcript; portions of Exhibit 1507 (unredacted version), Mr. Thomas’s deposition transcript; portions of Exhibit 1511 (unredacted version), Mr. Staines’ rebuttal declaration; and the entirety of Exhibit 1663,<sup>2</sup> all of which Patent Owner has designated as containing confidential information. *See* Paper 36, 2–3. Redacted, public

---

<sup>2</sup> Petitioner explains that Exhibit 1663 is also marked as Patent Owner’s Exhibit 2110, which was served on Petitioner, but not filed by Patent Owner as part of the record here. Paper 36, 2.

versions of each of the deposition transcripts and the declaration has also been filed. *See* Exs. 1506, 1507, 1511 (redacted versions).

Petitioner also moved to seal portions of its Motion to Exclude Evidence Submitted by Patent Owner Under 37 C.F.R. § 42.64(c), Paper 52 (unredacted version) (“Motion”), because it discusses information that has been designed by Patent Owner as confidential. Paper 50, 2–3. Petitioner also filed a redacted, public version of this Motion. *See* Paper 51. Petitioner also moves to seal portions of its Response to Patent Owner’s Motion for Observations on the Cross-Examination of John C. Staines, Jr., Paper No. 64 (unredacted version) (“Response”). *See* Paper 62. Petitioner also filed a redacted, public version of its Response. *See* Paper 65. Finally, Petitioner moves to seal portions of its Reply in Support of Their Motion to Exclude Under 27 C.F.R. § 42.64(c), Paper 74 (unredacted version) (“Reply”). Paper 77. Petitioner also filed a redacted, public version of its Reply. *See* Paper 75.

We have considered Petitioner’s arguments for sealing the requested portions of the documents set forth above, and the information sought to be sealed by Petitioner. Petitioner asserts it has no independent basis for sealing portions of the documents designated in its four motions to seal described above, but relies on Patent Owner’s assertions that information described in the documents discussed in the portions of the documents that Petitioner seeks to have sealed. *See* Paper 36, 3; Paper 50, 2–3; Paper 62, 2–3; Paper 77, 2. We find that because we determined that the Patent Owner has demonstrated good cause for sealing these underlying exhibits discussed in confidential portions of Petitioner’s Response and Reply, *see supra* at 2–3, we also determine that good cause exists to seal the unredacted versions

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.