

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS LLC

Petitioner

v.

CIPLA LIMITED

Patent Owner

Case No. IPR2017-00807

U.S. Patent No. 8,168,620

PATENT OWNER CIPLA LTD.'S MOTION TO EXPUNGE

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I. Introduction

Pursuant to 37 C.F.R. § 42.56, Patent Owner Cipla respectfully submits this Motion to Expunge exhibits CIP2151-CIP2155, the Second Declaration of Dr. Hugh Smyth (CIP2150), and the Second Declaration of Maureen Donovan (1145) from the record. These exhibits disclose highly confidential research and development information of both Cipla and Meda Pharmaceuticals Inc. (now part of Mylan Specialty L.P.) (exclusive licensee of the '620 patent) concerning the formulation of the Duonase and Dymista products that embody the '620 patent. Petitioner Argentum Pharmaceuticals LLC. does not oppose this motion.

II. Authorization for the motion

The Board authorized this motion in an email dated May 24, 2018.

III. Factual background

On November 20, 2017, Cipla filed an unopposed Motion to Seal exhibits CIP2151-CIP2155, and the Second Declaration of Dr. Hugh Smyth (CIP2150). (Paper 23.) On March 6, 2018, Argentum filed an unopposed Motion to Seal the Second Declaration of Maureen Donovan (1145) because it “cites to and discusses formulation details of Meda/Mylan’s Dymista product that Patent Owner Cipla’s [sic] has designated as confidential, and is the subject of Cipla’s own motion to seal.” (See Paper 29 at 2.)

This proceeding was terminated on May 21, 2018. (*See* Paper 60.) The Board has not ruled on these motions to seal as this proceeding was terminated before oral hearing.

IV. Argument

37 C.F.R. § 42.56 provides: “[a]fter denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.” The Board has previously explained that a party moving to expunge has to show that i) “any information sought to be expunged constitutes confidential information” and ii) the movant’s interest in expunging the information “outweighs the public’s interest in maintaining a complete and understandable file history.” *RPX Corp. v. Virnetx Inc.*, IPR 2014-00171, Paper 62 at 3 (P.T.A.B. Sept. 9, 2014). The rules identify confidential information as “a trade secret or other confidential research, development, or commercial information.” 37 C.F.R. § 42.54(a)(7). And 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.” 37 C.F.R. § 42.54(a); 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

In this case, exhibits CIP2150-CIP2155, and 1145 contain competitively-sensitive and highly-confidential research and development information of Cipla and Meda, including formulation information concerning the concentration of the components of the Duonase and Dymista products that embody the ’620 patent.

This information is proprietary, non-public information that, if disclosed to the public, would cause significant harm to Cipla and Meda (now Mylan) and could be used to their competitive disadvantage, for example, by providing to competitors important non-public formulation information. Thus, Cipla has met its burden of showing that “any information sought to be expunged constitutes confidential information.” *RPX Corp. v. Virnetx Inc.*, IPR 2014-00171, Paper 62 at 3 (P.T.A.B. Sept. 9, 2014).

In addition, Cipla’s interest in expunging exhibits CIP2150-CIP2155, and 1145 “outweighs the public’s interest in maintaining a complete and understandable file history.” (*Id.*) The Board did not rely on these exhibits in arriving at a final written decision. Accordingly, there is no need for this competitively-sensitive and highly-confidential information to become public as it is not needed to understand the Board’s decision. In any event, narrowly-redacted versions of each of the exhibits sought to be expunged (*see* exhibits CIP2171-2176, and 1165) will remain in the record. These exhibits “fulfill adequately the needs of the public to maintain a complete and understandable record in this case.” (*Id.* at 30.) Accordingly, because public access to exhibits CIP2171-2176, and 1165 fulfills the public’s interest in maintaining a complete and understandable record, the expungement of exhibits CIP2150-CIP2155, and 1145 from the record will not diminish the public’s understanding.

V. Conclusion

For the reasons stated above, Cipla respectfully requests that exhibits CIP2151-CIP2155, the Second Declaration of Dr. Hugh Smyth (CIP2150), and the Second Declaration of Maureen Donovan (1145) be expunged from the record.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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