

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner,

v.

COSMO TECHNOLOGIES LIMITED,
Patent Owner.

Case IPR2017-01035

Patent 9,320,716

PETITIONER'S MOTION TO EXPUNGE

I. Introduction

Pursuant to the Board’s authorization via email on July 7, 2017, Petitioner hereby moves to expunge the redacted Patent Owner’s Preliminary Response (“Original Redacted Preliminary Response”) (Paper 8) from the public record. As explained in the concurrently filed Petitioner’s Motion to Seal, Public disclosure of the information that Petitioner seeks to have sealed would be commercially harmful to Petitioner. The Original Redacted Preliminary Response does not redact each of the portions of sentences Petitioner seeks to seal. Thus, Petitioner moves to expunge the Original Redacted Preliminary Response from the public record.

II. Legal Standard

“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 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 publicly available.” Office Trial Practice Guide, 77 Fed. Reg. at 48,756, 48,770 (Aug. 14, 2012); *see also id.* at 48,771. The movant must “(1) explain why each portion of the information . . . it seeks to redact constitutes ‘confidential information’ as defined in 37 C.F.R. §42.2; and (2) explain why good cause exists for each

redaction.” *Altaire Pharm., Inc. v. Paragon Biotech, Inc.*, PGR2015-0001, Paper 27 at 3 (PTAB Mar. 29, 2016).

III. Confidential Documents that Should be Expunged from the Record

As explained in the concurrently filed Petitioner’s Motion to Seal the Patent Owner’s Preliminary Response (Paper 7), the Patent Owner’s Preliminary Response reveals information regarding Petitioner’s ANDA product, specifically the following passages:

- The portion of the sentence on page 6, footnote 2, the parenthetical at line 6 that is between the phrases “prove infringement” and “is nevertheless”;
- The portion of the sentence on page 36 lines 6-8 that is between the phrases “in district court litigation—” and “—should be rejected”; and
- The portion of the sentence on page 51 lines 9-11 that is between the phrases “in district court litigation—” and “—should be rejected.”

The identified portions directly provide information regarding Petitioner’s ANDA product—specifically how the active ingredient in Petitioner’s ANDA product is distributed. The Original Redacted Preliminary Response does not redact the portion of the sentence on page 6, footnote 2 line 6 that Petitioner seeks to seal. Information regarding Petitioner’s ANDA product is trade secret and/or confidential commercial information, thus qualifies as confidential information under 37 CFR § 42.2.

The redactions in the Original Redacted Preliminary Response are only applied to, as indicated by the Patent Owner’s Motion to Seal, the portions that are

purportedly quoting the excerpts from the trial transcript in *Cosmo Techs. Ltd. v. Actavis Labs. FL*, No. 15-164-LPS (D. Del. May 23, 2017) (the “Transcript”) (Exhibit 2025). *See* Patent Owner’s Motion to Seal, Paper 9 at 3. The Original Redacted Preliminary Response, however, does not contain redactions with respect to other portions that reveal information regarding the Petitioner’s ANDA product, specifically the portion of the sentence on page 6, footnote 2 line 6 that Petitioner seeks to seal. Petitioner agrees to file a further revised Redacted Preliminary Response that redacts the confidential information that is subject to the concurrently filed Petitioner’s Motion to Seal, if granted, and redacts the confidential information that is subject to Patent Owner’s Motion to Seal (Paper 9), if granted, or upon the request from the Board.

Good cause exists because public disclosure of the information that Petitioner seeks to have sealed and redacted would disclose confidential information in a highly competitive market. This information has not been published and is not publicly available. Disclosure of this confidential information would allow competitors to ascertain how Petitioner’s ANDA product is made and potentially the testing performed by Petitioner during its manufacture, which is confidential and competitive information to Petitioner.

Petitioner understands that the rules promulgated by the USPTO “aim to 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.” Office Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). Petitioner contends that its redactions—constituting only portions of a few sentences—are minimal and are far less than those proposed by Patent Owner in its Motion to Seal (Paper 9). Even with Petitioner’s proposed redactions the public will be left with a complete and understandable file history, only being unaware of the distribution of ingredient component in Petitioner’s ANDA product.¹ *Sandoz, Inc. v. EKR Therapeutics, LLC*, IPR2015-00005, Paper 21 at 4 (PTAB Apr. 24, 2014) (“The redactions to the Petitioner’s Reply appear to be limited to isolated passages that consist entirely of confidential commercial information. The redactions made to the Petitioner’s Reply would not inhibit a reader’s understanding of the substance of the Petitioner’s position.”). Petitioner contends that such information would not impede the public’s understanding of Patent Owner’s Preliminary Response and strikes the appropriate balance between the public’s interest and Petitioner’s interest in protecting its confidential information.

¹ Indeed, coupled with the statements in this Paper, the public will understand what the redacted information generally relates to, left only without information about the distribution of ingredient component in Petitioner’s ANDA product.

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