

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 RESPONSE TO
PATENT OWNER'S MOTION TO SEAL**

Pursuant to 37 C.F.R. § 42.25(a)(1), Petitioner Mylan Pharmaceuticals Inc. (“Mylan” or “Petitioner”) hereby responds to Patent Owner Cosmo Technologies Ltd.’s (“Cosmo” or “Patent Owner”) Motion to Seal and for Entry of a Protective Order (Paper 9). Patent Owner’s Motion attempts to seal 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) and the Patent Owner’s Preliminary Response (“Preliminary Response”) (Paper 7). While Petitioner does not oppose that Exhibit 2025 and the Preliminary Response should be sealed, Petitioner files this motion to clarify the record and respond to certain issues raised by Patent Owner’s Motion to Seal.

Patent Owner’s Motion to Seal states there is good cause to seal the Transcript and portions of the Patent Owner Preliminary Response because the Transcript “is not available on the public docket” and because the Preliminary Response “quotes the Transcript.” Paper 9 at 3. Mylan was not a party in the *Cosmo Techs. Ltd. v. Actavis Labs. FL* case. Because Patent Owner’s grounds for moving is due to presumably third party confidential information contained in a trial transcript in which Petitioner is not a party, Petitioner takes no position as to whether Exhibit 2025 and any description of Exhibit 2025 by Patent Owner in its

Preliminary Response contains confidential information. As such, Petitioner does not oppose Patent Owner's Motion to Seal.¹

However, as explained in Petitioner's Motion to Seal filed on July 13, 2017 (Paper 11), the Preliminary Response does reveal Petitioner's confidential information regarding its ANDA product. Petitioner has identified portions of Patent Owner's Preliminary Response that reveal confidential information

¹ As of the filing of this paper, the district court records on PACER states the following with respect to the trial transcript that was filed as Exhibit 2025:

Official Transcript of Bench Trial - Volume B held on May 23, 2017 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Telephone (302) 573-6360. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 7/18/2017. Redacted Transcript Deadline set for 7/28/2017. Release of Transcript Restriction set for 9/25/2017. (bpg)

Petitioner, not being a party to that trial, is not aware whether any of the parties in that trial have requested redactions by July 18, 2017.

regarding Petitioner's ANDA product. *See* Paper 11 at 3.² Petitioner provided its justification to seal these limited portions of Patent Owner's Preliminary Response to the Board in its Motion to Seal (Paper 11), and Patent Owner does not oppose Petitioner's claim that the identified portions contain Petitioner's confidential information. Paper 13 at 1.

Given that it was Petitioner's confidential information at issue, Petitioner was required to move to seal portions of the Preliminary Response that revealed Petitioner's confidential information. *See Clio USA, Inc. v. Proctor & Gamble Co.*, IPR2013-00438, -00448, -00450, Paper No. 51 at 3 (P.T.A.B. Sep. 29, 2014) ("P&G should have been the party moving to seal . . . because it is supposedly P&G's confidential information at issue."). Petitioner moved as soon as practical as detailed in Petitioner's Motion to Expunge. Paper 12 at 5-6.³

² The portions that Petitioner seeks to redact on pages 36 and 51 of the Preliminary Response are portions that Patent Owner also sought to seal and redacted. *See* Original Redacted Preliminary Response (Paper 8) at 36, 51.

³ Although Patent Owner's has attempted to recount its version of the timeline of events to suggest that Petitioner was not diligent in moving for seal and expunge, Patent Owner did not account for weekends and a federal holiday

Furthermore, 37 C.F.R. § 42.54(a) requires the movant to include “a certification that the moving party has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute.” Patent Owner’s Motion to Seal includes a statement that “Patent Owner and Mylan conferred regarding the entry of a protective order in this case.” Petitioner does not dispute this assertion as the parties did communicate regarding the entry of a protective order. Patent Owner’s Motion to Seal, however, does not include any certification regarding the sealing of the Transcript and the content of Patent Owner’s Preliminary Response. Indeed, Petitioner was not made aware of Patent Owner’s intention to file a motion to seal.⁴

(Independence Day), and ignored the time that was required to fully meet and confer on the issue. *See* Paper 14 at 4-5.

⁴ Petitioner is not aware whether Patent Owner has conferred with or attempted to confer with the other parties affected by the submission of the Transcript, defendants Actavis Laboratories FL, Inc. and Alvogen Pine Brook, LLC who were parties in the *Cosmo Techs. Ltd. v. Actavis Labs. FL* case.

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