

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARGENTUM PHARMACEUTICALS LLC,  
Petitioner

v.

ALCON RESEARCH, LTD.,  
Patent Owner

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Case IPR2017-01053  
Patent 8,268,299

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**ALCON RESEARCH, LTD.'S MOTION TO SEAL AND MOTION FOR  
ENTRY OF PROPOSED PROTECTIVE ORDER**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Alcon Research, Ltd. (“Alcon”) hereby respectfully moves to seal confidential laboratory notebooks and adjunctive data (Exhibits 2008–2022), portions of the Declaration of Dr. Henry Grabowski, Ph.D. (Exhibit 2029), and certain exhibits on which Dr. Grabowski relied in forming his opinions (Exhibits 2040–2058). In support of this Motion, Alcon is also submitting a proposed protective order (Exhibit 2140), which is the Default Standing Protective Order. *See* 37 C.F.R. § 42.54(a).

**A. Motion to Seal**

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54; Decision – Revised Motion to Seal, *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, Case IPR2012-00001 (JL), at 4 (Apr. 5, 2013) (hereinafter *Garmin Decision*). Good cause exists for sealing these exhibits.

**1. Laboratory notebooks and adjunctive data**

Exhibits 2008–2022 are excerpts of confidential laboratory notebooks and adjunctive data used by Alcon employees to record their research and development work. These documents are being submitted in support of affidavits filed pursuant to 37 C.F.R. § 42.61 describing how certain data in the specifications of Alcon patents were generated. Although the data on which Alcon relies in this proceeding are disclosed in public patent specifications, the documents Alcon proposes to seal also disclose internal Alcon laboratory methods and practices and

additional, unpublished testing data. Public disclosure of these confidential, internal documents reflecting Alcon's research and development work has the potential to cause Alcon competitive harm.

Because the data on which Alcon relies in this proceeding are already in the public record, the public's interest in having access to these documents in order to "maintain a complete and understandable file history" is minimal. *Garmin Decision* at 8 (balancing need for confidentiality against public's interest).

Moreover, pursuant to 37 C.F.R. § 42.61, these documents are being submitted in conjunction with the declarations of Bhagwati Kabra, Ph.D., and Stephen Shannon, MBA, Ph.D. Dr. Kabra's and Dr. Shannon's declarations explain the testing data in the patent specification, explain in general the significance of the laboratory notebooks and adjunctive data, and are not being filed under seal. Accordingly, a "complete and understandable file history" will be available to the public even if these exhibits are sealed.

## **2. Summaries of IMS Health/IQVIA and Encuity Research Data**

Exhibits 2040–2058 summarize data provided to Alcon by IMS Health/IQVIA and Encuity Research. These exhibits contain data on sales, units, prescriptions, and promotional spending for a number of pharmaceutical products. These data were provided by IMS Health/IQVIA and Encuity Research to Alcon or to counsel for Alcon pursuant to agreements to keep the data confidential. It is

undersigned counsel's understanding that IMS Health/IQVIA and Encuity Research charge customers for these data, that they do not make their data generally available to the public, and that they would be harmed by the public disclosure of these data without a confidentiality agreement.

The public's interest in having access to these exhibits is minimal. *See Garmin Decision* at 8. These exhibits are being provided in support of the declaration of Dr. Henry Grabowski, Ph.D. In conjunction with this motion, Alcon is submitting a non-confidential, redacted version of Dr. Grabowski's declaration. The substance of Dr. Grabowski's opinions can be fully ascertained from the redacted declaration; the only information not reflected in the redacted declaration is data from IMS Health/IQVIA and Encuity Research and Dr. Grabowski's specific calculations based on that data. Moreover, interested members of the public can obtain the data in question directly from IMS Health/IQVIA and Encuity Research (presumably for a fee).

### **3. Dr. Grabowski's Declaration**

Exhibit AL 2029 is the declaration of Dr. Henry Grabowski, Ph.D. This exhibit discloses data (and calculations derived therefrom) obtained from IMS Health/IQVIA and Encuity Research. As explained above, good cause exists to seal these data, *see supra* Part A.2, and for the same reasons, good cause exists to

seal the portions of Dr. Grabowski's declaration which disclose these data or calculations derived therefrom.

**B. Proposed Protective Order**

Pursuant to 37 C.F.R. § 42.54, Alcon is submitting a proposed protective order, attached hereto as Exhibit 2140, which is the Default Standing Protective Order. Alcon requests that the proposed protective order be entered and that its terms govern the confidentiality of the exhibits which are the subject of this motion.

**C. Certification of Conference with Opposing Party Pursuant to 37 C.F.R. § 42.54**

Alcon certifies that it wrote to Argentum's counsel on December 22, 2017 regarding Argentum's consent to the entry of the proposed protective order, but did not receive a response before filing this motion.

**D. Conclusion**

For the foregoing reasons, Alcon respectfully requests that its motion to seal be granted and that the PTAB enter the proposed protective order.

Dated: December 22, 2017

Respectfully submitted,

/David M. Krinsky/  
David M. Krinsky  
Reg. No. 72,339  
Lead Counsel for  
Patent Owner

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