

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARO PHARMACEUTICALS U.S.A., INC.,
Petitioner,

v.

APOTEX TECHNOLOGIES, INC.,
Patent Owner

U.S. Patent No. 7,049,328 B2

Case No.: IPR2017-01446

PETITIONER'S MOTION TO SEAL

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner Taro Pharmaceuticals USA, Inc. respectfully requests that the Board seal (1) Petitioner’s Motion to Compel Routine Discovery, or in the Alternative, for Additional Discovery (“the Motion”), (2) Exhibits 1037-1045 and 1047-1049 that accompany the Motion, and (3) Exhibit 1036, which is a transcript of the March 23, 2018 telephone conference in which the parties and the Board discussed the Motion.

The parties have conferred and agreed to the provisions of the Modified Default Standing Protective Order set forth in Exhibit 1051, and have stipulated to be bound by its terms. Ex. 1050 shows the proposed modifications from the Default Standing Protective Order to which the parties have stipulated, in redline. The Modified Default Standing Protective Order provides:

A party may file documents or information with the Board under seal, together with a non-confidential description of the nature of the confidential information that is under seal and the reasons why the information is confidential and should not be made available to the public. The submission shall be treated as confidential and remain under seal, unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that the documents or information do not to qualify for confidential treatment.

(Ex. 1051 (Modified Default Standing Protective Order).)

The Motion refers to information contained in Exhibits 1037-1045 and 1047-1049, which are documents that Patent Owner Apotex Technologies, Inc. has designated as Highly Confidential pursuant to the Stipulated Protective Order entered in the concurrent district court case, *ApoPharma Inc. v. Taro Pharmaceutical Industries, Ltd.*, Case No. 2:16-cv-00528 (E.D.Tex.). Petitioner therefore filed the Motion under seal, along with a publicly-available redacted version of the Motion. Petitioner also filed Exhibits 1036-1045 and 1047-1049 under seal.

I. Good Cause Exists for Sealing the Documents

Although “the default rule is that all papers filed in an *inter partes* review are open and available for access by the public,” a party may file a motion with the Board to seal confidential information that is protected from disclosure. *See Garmin Int’l, Inc. v. Cuozzo Speed Techs., LLC*, IPR2012-00001, Paper No. 34 (PTAB Mar. 14, 2013). “The standard for granting a motion to seal is ‘for good cause.’” *Id.* (quoting 37 C.F.R. § 42.54). The Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012), states that the “rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.”

Petitioner is filing a Motion to Compel Routine Discovery, or in the Alternative, for Additional Discovery, which refers to materials that Patent Owner has designated as “Highly Confidential” under the Stipulated Protective Order filed in the concurrent district court case. Those materials are being filed with the Motion. (Exs. 1037-1045 and 1047-1049.) Petitioner is seeking to seal these documents and the Motion, and based on Patent Owner’s designation in the ongoing district court litigation, there is good cause to seal these documents.

Petitioner is also filing Exhibit 1036, which is the transcript of the telephonic conference in which the parties and the Board discussed the Motion. Patent Owner designated that transcript as confidential, and there is therefore good cause to seal this document.

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

The parties have conferred and Patent Owner does not oppose this motion.

THEREFORE, Petitioner respectfully requests that the Board grant this Motion to Seal.

Respectfully submitted,

Date: April 16, 2018

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