

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WATSON LABORATORIES, INC.,  
Petitioner,

v.

UNITED THERAPEUTICS, CORP.,  
Patent Owner.

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Case IPR2017-01621 and IPR2017-01622  
Patents 9,358,240 B2 and 9,339,507 B2

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Before TONI R. SCHEINER, ERICA A. FRANKLIN, and DAVID  
COTTA, *Administrative Patent Judges*.

COTTA, *Administrative Patent Judge*.

ORDER  
Motion to Seal  
*37 C.F.R. §§ 42.14 and 42.54*

## I. INTRODUCTION

On May 4, 2018, United Technologies Corp. (“Patent Owner”) filed a Motion to Seal. Paper 41 (“Motion” or “Mot.”).<sup>1</sup> The motion seeks to seal Exhibits 2049–2051, 2055, 2058, 2065–2068, 2071, 2074, 2075, 2083, 2088, 2089, and portions of Exhibit 2053. Mot. 1. Patent Owner represents:

Exhibits 2055, 2058, 2065-2068, 2071, 2074, 2075, 2088, 2089 report marketing, sales, and pricing information for Tyvaso® and other United Therapeutic products. Exhibits 2049-2051 and 2083 describe information on protocols, procedures, and data submitted to and held in confidence by the FDA in relation to the approval of Tyvaso®. Such information could be improperly used by competitors to gain unfair business and competitive advantage with customers in the marketplace, including using details of Patent Owner’s process for competitive commercial products.

Mot. 3. Patent Owner further represents that the portions of Exhibit 2053 that it seeks to file under seal are “narrowly limited in this motion to the details taken from the exhibits produced and under seal in the litigation.” *Id.* at 3–4.

Patent Owner asserts that it has made efforts to maintain the confidentiality of the information and that to the best of its knowledge, “the information sought to be sealed by this Motion to Seal has not been published or otherwise made public.” *Id.* at 4.

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<sup>1</sup> There are slight differences in the numbering of Papers and Exhibits in IPR2017-01621 and IPR2017-01622. Notwithstanding these differences, the papers relating to the motions addressed herein are substantively identical. Unless otherwise noted, for the convenience of the Board, citations to Papers and Exhibits referenced herein are only to IPR2017-01621, with the understanding that there exists a corresponding, substantively identical, Paper or Exhibit in IPR2017-01622.

IPR2017-01621 (Patent 9,358,240 B2)

IPR2017-01622 (Patent 9,339,507 B2)

Patent Owner represents that it has conferred with Petitioner and that Petitioner does not oppose the motion. *Id.*

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54. There is a strong public policy that favors making information filed in *inter partes* review proceedings open to the public. *See Garmin International v. Cuozzo Speed Technologies, LLC*, Case IPR2012-00001, slip op. at 1-2 (PTAB March 14, 2013) (Paper 34) (discussing the standards of the Board applied to motions to seal). *Id.* at 1–2. The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record.

Upon consideration of the parties’ arguments and the information sought to be redacted, Patent Owner’s motion is granted. Patent Owner has shown that the material it seeks to maintain under seal is of a confidential nature, the disclosure of which could be used by competitors to gain unfair business and competitive advantages. Thus, Patent Owner has shown that good cause exists for sealing the entirety of Exhibits 2049–2051, 2055, 2058, 2065–2068, 2071, 2074, 2075, 2083, 2088, 2089, and portions of Exhibit 2053. Those exhibits shall be subject to the protective order entered on April 27, 2018 (Paper 36).

Accordingly, it is hereby

ORDERED that Patent Owner’s Motion to Seal is granted.

IPR2017-01621 (Patent 9,358,240 B2)

IPR2017-01622 (Patent 9,339,507 B2)

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