

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MYLAN PHARMACEUTICALS, INC.,  
Petitioner,

v.

BAYER INTELLECTUAL PROPERTY GMBH,  
Patent Owner.

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Case IPR2018-01143  
Patent 9,539,218 B2

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Before JACQUELINE WRIGHT BONILLA, *Acting Deputy Chief  
Administrative Patent Judge*, RAMA G. ELLURU and  
TINA E. HULSE, *Administrative Patent Judges*.

HULSE, *Administrative Patent Judge*.

DECISION  
Granting Petitioner's Renewed Motion to Seal  
*37 C.F.R. § 42.54*

## I. INTRODUCTION

On October 22, 2018, Mylan Pharmaceuticals Inc. (“Petitioner”) filed a Motion to Seal Exhibits 1066–1068. Paper 9. In that Motion, Petitioner requested entry of a Stipulated Protective Order. *Id.* at 1. On November 30, 2018, we granted Petitioner’s motion for entry of the Stipulated Protective Order, but denied without prejudice the motion to seal the exhibits because Petitioner did not sufficiently explain how the redacted claim construction arguments in Exhibits 1066–1068 could cause Petitioner “business-related competitive harm.” Paper 12, 1.

In response to our decision, Petitioner refiled Exhibits 1066–1068 with fewer redactions and a public redacted version of the Surreply (Paper 10). Petitioner also filed a renewed motion to seal the redacted portions of Exhibits 1066–1068 and Paper 11. Paper 14 (“Ren. Mot.”). Bayer Intellectual Property GmbH (“Patent Owner”) did not file an opposition to the Renewed Motion.

For the reasons set forth below, we grant Petitioner’s Renewed Motion.

## II. ANALYSIS

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. Petitioner, as the moving party, has the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c). The Board has a strong interest in the public availability of the proceedings. Accordingly, our rules 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 Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012).

Petitioner renews its request to seal the redacted portions of Exhibits 1066–1068 (“the Exhibits”) and the Surreply because the unredacted versions of the Exhibits were submitted under seal in the copending district court case and are governed by the protective order in that case. Ren. Mot. 1–2. Petitioner contends that the redacted portions contain confidential litigation positions that would cause Petitioner irreparable competitive harm if disclosed to Petitioner’s competitors. *Id.* at 2.

Although we remain skeptical that such claim construction arguments amount to business confidential information, we are cognizant that the information is sealed in the district court case and governed by the protective order in that case. Moreover, we did not rely on the redacted information in our Decision Denying Institution, thereby minimizing the public’s interest in the redacted information. *See* Paper 13.

Accordingly, we determine Petitioner has established good cause to seal the redacted portions of the Exhibits and the Surreply pursuant to the Stipulated Protective Order until the documents are made public or expunged from the record. *See* 37 C.F.R. § 42.56.

### III. CONCLUSION

For the foregoing reasons, we conclude that Petitioner has established good cause to seal the redacted portions of Exhibits 1066–1068 and the Surreply.

#### IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Renewed Motion to Seal Exhibits 1066–1068 and Paper 11 is *granted*; and

FURTHER ORDERED that the confidential versions of Exhibits 1066–1068 and the Surreply shall remain under seal pursuant to the Stipulated Protective Order until the documents are made public or expunged from the record.

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