

Paper No. \_\_\_\_  
Filed: October 22, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MYLAN PHARMACEUTICALS INC.,  
Petitioners,

v.

BAYER INTELLECTUAL PROPERTY GMBH,  
Patent Owner.

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IPR2018-01143  
Patent No. 9,539,218

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**PETITIONER'S MOTION TO SEAL EXS. 1066-1068**

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## **I. STATEMENT OF PRECISE RELIEF REQUESTED**

Pursuant to 37 C.F.R. §§ 42.14, 42.54, Petitioner Mylan Pharmaceuticals Inc. respectfully submits this motion for entry of a stipulated protective order and to seal unredacted versions of Exhibits 1066-1068. The unredacted versions of Exhibits 1066-1068 were submitted under seal in Case No. 17-cv-462 (RGA) pending in the United States District Court for the District of Delaware. They contain information that is confidential to Mylan. Redacted versions of these exhibits were filed publicly at the district court and are also filed publicly in this proceeding. Mylan is serving Patent Owner with both confidential and public versions of each document.

## **II. MOTION FOR ENTRY OF A STIPULATED PROTECTIVE ORDER**

Mylan moves for entry of a Stipulated Protective Order (EX1070). EX1070 is based on the Default Protective Order in Trial Practice Guide, 77 Fed. Reg. 48756, 48771 (Aug. 14, 2012). A redlined version of the Default Protective Order is submitted in EX1071 to show the change relative to the Default Protective Order, which is located in Section 2(B). The change replaces the word “Representatives” with the phrase “Attorneys associated with the law firm.”

## **III. GOOD EXISTS FOR SEALING CONFIDENTIAL INFORMATION**

The Board will seal documents upon a showing of “good cause.” *Garmin v. Cuozzo*, IPR2012-00001, Paper 36 at 3 (PTAB April 5, 2013). “The 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." *The Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

Here, Mylan seeks to file the unredacted version of Exhibits 1066-1068 under seal because they contain non-public, business-sensitive information. The documents were filed under seal and are governed by the protective order in Case No. 17-cv-462 (RGA) pending in the United States District Court for the District of Delaware. Mylan's competitors are not privy to the redacted portions of Exhibits 1066-1068. Disclosure of this non-public briefing to Mylan's competitors may subject Mylan to business-related competitive harm. Mylan has minimized any prejudice to the public's interest in access to the record in these proceedings by filing its Reply brief without redaction (while preserving the confidentiality of the redacted information in the exhibits). The prospect of competitive harm to Mylan, coupled with the minimal public interest in accessing the underlying exhibits that were filed under seal at the district court, favors sealing the unredacted documents.

#### **IV. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37 C.F.R. §42.54**

Counsel for Mylan has conferred with counsel for Bayer regarding the confidentiality of Exhibits 1066-1068 and regarding the Stipulated Protective Order (EX1070). The parties agreed to change Section 2(B) of the Default Protective Order, resulting in the Stipulated Protective Order (EX1070).

**V. CONCLUSION**

For the reasons provided above, Mylan requests that the Board enter the Stipulated Protective Order (EX1070) and seal the unredacted versions of Exhibits 1066-1068.

Respectfully submitted,

Date: October 22, 2018

/ Steven W. Parmelee /

Steven W. Parmelee  
Reg. No. 31,990

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