

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner,

v.

BAYER INTELLECTUAL PROPERTY GMBH,
Patent Owner.

IPR2018-01143
Patent No. 9,539,218

**PETITIONER'S RENEWED MOTION TO SEAL
PORTIONS OF EXS. 1066-1068 AND PAPER 11**

I. STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14, 42.54 and the Board's November 30, 2018 decision (Paper No. 12), Petitioner Mylan Pharmaceuticals Inc. respectfully submits this renewed motion to seal unredacted versions of Exhibits 1066-1068 and Paper 11.

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 business confidential to Mylan. Redacted versions of these exhibits were filed publicly at the district court and revised redacted versions are concurrently being filed publicly in this proceeding.

In response to the Board's comment on page 4 of paper 12, questioning the confidentiality of certain redactions, such as from the '218 patent specification and other public filings in this proceeding, Petitioner supplies herewith revised redacted copies so as to provide fewer redactions.

In response to the Board's comment on page 4 that some material may become public during trial, if said trial occurs and if such material becomes public before confidential materials are expunged from this proceeding, Petitioner will notify the Board and request that the non-redacted versions be made public.

Lastly, the Board questioned the basis for the "business-related competitive

harm.” If Petitioner’s competitors are made privy to the redacted portions, Petitioner believes they are provided with litigation positions and strategy that they would not otherwise have, to the competitive detriment of Petitioner. This remains true unless and until the redacted material becomes public in the district court. Any Board action disclosing the redacted material prior to its public disclosure in the district court would thus subject Petitioner to irreparable competitive harm by disclosing Petitioner’s confidential litigation arguments to Petitioner’s competitors.

As noted previously, 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.

Petitioner believes that good cause exists upon which the Board may grant this motion as to these redacted Exhibits 1066-1068, as revised herewith, and corresponding redactions in Patent Owner’s Sur-Reply (current public version filed as Paper 11).

II. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37 C.F.R. §42.54

Counsel for Mylan has previously conferred with counsel for Bayer regarding the confidentiality of Exhibits 1066-1068.

III. CONCLUSION

For the reasons provided above, Mylan requests that the Board seal the unredacted versions of Exhibits 1066-1068 and of Paper 11.

Date: December 14, 2018

Respectfully submitted,

/ Steven W. Parmelee /

Steven W. Parmelee

Reg. No. 31,990

CERTIFICATE OF SERVICE

This is to certify that I caused to be served true and correct copies of the foregoing Petitioner's Renewed Motion to Seal Portions of Exhibits 1066-1068 and Paper 11, as well as revised redacted versions of Exhibits 1066-1068 on this 14th day of December, 2018, on the Patent Owner at the correspondence address of the Patent Owner as follows:

Dov P. Grossman
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Dated: December 14, 2018

/ Steven W. Parmelee /
Steven W. Parmelee,
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