

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ELI LILLY AND COMPANY,
Petitioner,

v.

TEVA PHARMACEUTICALS INTERNATIONAL GMBH,
Patent Owner.

CASE IPR2018-01423
Patent 9,266,951

PATENT OWNER'S MOTION TO EXPUNGE

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U.S. Patent and Trademark Office
P.O. Box 1450
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I. Introduction

Patent Owner Teva Pharmaceuticals International GmbH respectfully submits this Motion to Expunge the confidential version of Exhibit 2257 from the record, per 37 C.F.R. § 42.56. The confidential version of Exhibit 2257 contains information relating to highly-confidential and competitively-sensitive business information that the Board did not rely on it in its Final Written Decision. Further, the public's interests are served by the redacted version of Exhibit 2257. Thus, Petitioner's interests in expunging the confidential version of Exhibit 2257 outweighs the public's interest in maintaining it in the record. Patent Owner certifies that the parties have conferred in good faith regarding this motion, and that Petitioner has indicated that it will not oppose this motion.

II. Authorization for the motion

The Board authorized this motion in the Decision Granting Patent Owner's Combined Unopposed Motions (1) for Entry of Modified Protective Order and (2) to Seal Exhibit 2257, dated October 15, 2019. Paper 46, 6.

III. Procedural Background

On July 1, 2019, Patent Owner filed a Combined Motion for Entry of Modified Protective Order and Motion to Seal Exhibit 2257 (Paper 28; "Combined Motion"). The Board granted Patent Owner's Combined Motion on October 15,

2019. Paper 46. The Board entered its Final Written Decision in this proceeding on February 18, 2020. Paper 77. In the Final Written Decision, the Board expressly stated that it did not rely upon any of the redacted confidential information in reaching its decision:

We granted Patent Owner's Motion to Seal with respect to Exhibit 2257. *See* Paper 48. The record contains both a confidential version and a public, redacted version of Exhibit 2257. Citations herein are to the public version of the document. We do not rely on any of the redacted information for purposes of this Final Written Decision.

Paper 77, 138, n.113.

The confidential version of Exhibit 2257 currently remains under seal and subject to the modified protective order in this proceeding.

IV. Argument

37 C.F.R. § 42.56 provides: "[a]fter denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record." The Board has previously explained that a party moving to expunge has to show that i) "any information sought to be expunged constitutes confidential information" and ii) the movant's interest in expunging the information "outweighs the public's interest in maintaining a complete and

understandable file history." *RPX Corp. v. Virnetx Inc.*, IPR2014-00171, Paper 62, 3 (P.T.A.B. Sept. 9, 2014). The rules identify confidential information as including "a trade secret or other confidential research, development, or commercial information." 37 C.F.R. §§ 42.54(a)(7) and 42.2. And the Board must 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." 37 C.F.R. § 42.54(a); 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

In this case, Patent Owner has already demonstrated, and the Board already agreed, that the confidential version of Exhibit 2257 contains highly-confidential, competitively-sensitive business information. Paper 46, 4-5. Broadly, the confidential version of Exhibit 2257 contains information about settlement and license terms between Teva and a third party, Alder Bio, which are of the nature contemplated as protectable under Fed. R. Civ. P. 26(c)(1)(G). Therefore, public disclosure of the confidential version of Exhibit 2257 would cause significant competitive harm not only to Patent Owner, but also to a third party who is not part of this proceeding. There has been no change in the sensitivity or confidentiality of the information contained in the confidential version of Exhibit 2257 since Teva filed its Combined Motion. Thus, Patent Owner has met its burden in showing that

"any information sought to be expunged constitutes confidential information." *RPX Corp. v. Virnetx Inc.*, IPR2014-00171, Paper 62, 3 (P.T.A.B. Sept. 9, 2014).

Patent Owner's interest in expunging the confidential version of Exhibit 2257 "outweighs the public's interest in maintaining a complete and understandable file history." *Id.* None of the redacted portions of the confidential version of Exhibit 2257 are material to this proceeding, as neither party cited to a confidential portion of the confidential version of Exhibit 2257. Further, in the Final Written Decision, the Board expressly stated: "[w]e do not rely on any of the redacted information for purposes of this Final Written Decision." Paper 77, 138. Moreover, the record contains a public redacted version of Exhibit 2257 that contains all the information upon-which the Board did rely. Accordingly, the public's access to the redacted version of Exhibit 2257 fulfills the public's interest in maintaining a complete and understandable record, and the expungement of the confidential version of Exhibit 2257 from the record will not diminish the public's understanding of the Final Written Decision.

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