

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 IPR2018-01422 (Patent No. 9,340,614)
Case IPR2018-01423 (Patent No. 9,266,951)
Case IPR2018-01424 (Patent No. 9,346,881)
Case IPR2018-01425 (Patent No. 9,890,210)
Case IPR2018-01426 (Patent No. 9,890,211)
Case IPR2018-01427 (Patent No. 8,597,649)¹

Before JENNIFER MEYER CHAGNON, JAMES A. WORTH, and
RICHARD J. SMITH, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Combined Unopposed Motions (1) for Entry of
Modified Protective Order and (2) to Seal Exhibit 2257
37 C.F.R. § 42.14

¹This Order addresses issues that are common to all six cases. We, therefore, issue a single Order that has been entered in each case. The parties may use this style caption when filing a single paper in multiple proceedings, provided that such caption includes a footnote attesting that "the word-for-word identical paper is filed in each proceeding identified in the caption."

IPR2018-01422 (Patent No. 9,340,614) IPR2018-01423 (Patent No. 9,266,951)
IPR2018-01424 (Patent No. 9,346,881) IPR2018-01425 (Patent No. 9,890,210)
IPR2018-01426 (Patent No. 9,890,211) IPR2018-01427 (Patent No. 8,597,649)

Inter partes review was instituted in the above-referenced cases on February 19, 2019 (IPR2018-01422, -01423, -01424) and February 25, 2019 (IPR2018-01425, -01426, -01427). Paper 14.² Patent Owner filed a Response (Paper 24) to each Petition, and Petitioner filed a Reply (Paper 39, “Reply”) to each Response.³

In an e-mail to the Board on June 13, 2019, Patent Owner requested a conference call with the Board to seek guidance regarding Petitioner’s objections to a redacted exhibit (Exhibit 2257 filed in all of the above-referenced cases). Ex. 3001. According to that e-mail, Petitioner objected to Exhibit 2257 as “improperly filed as redacted without a protective order.” *Id.* That e-mail also indicated that the parties had conferred and that Petitioner opposed Patent Owner’s request for guidance from the Board, and that Petitioner further opposed the Board performing an *in camera* review of an unredacted version of Exhibit 2257 to determine whether the redacted information is immaterial. *Id.*

A conference call was held between counsel for the parties and the Board (Judges Chagnon, Worth, and Smith) on June 19, 2019, to discuss Patent Owner’s request. *See* Ex. 2261 (“Tr.”). One of the options for resolution discussed during the call was an agreed upon, modified protective order, and the parties agreed to discuss the matter further to determine whether the issue regarding Exhibit No. 2257 could be resolved. Tr. 18–21.

² Paper numbers in this Order refer to papers filed in IPR2018-01422. A redacted version of Exhibit 2257 was filed in each of the above-referenced cases on May 31, 2019, and a confidential unredacted version of Exhibit 2257 was filed in each of the above-referenced cases on July 1, 2019.

³ By stipulation of the parties, Patent Owner’s Sur-reply is due October 18, 2019. Paper 27.

On July 1, 2019, Patent Owner filed a Combined Motion for Entry of Modified Protective Order and Motion to Seal Exhibit 2257 (Paper 29) (“Combined Motion”), and an unredacted version of Exhibit 2257. The Combined Motion states that “[w]hile Petitioner does not concede that the information redacted in Exhibit 2257 is immaterial, Petitioner has confirmed that it will not oppose either Motion.” Paper 29, 2.

In an *inter partes* review, the moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c).

Motion for Entry of Modified Protective Order

The Combined Motion indicates that the proposed protective order modifies the Board’s Default Protective Order, and attaches both a Modified Protective Order (Addendum A) and a redline version (Addendum B) showing the differences between the Modified Protective Order and the Board’s Default Protective Order.⁴ According to Patent Owner:

The differences are minimal and relate to: (i) specifying Petitioner’s counsel who have access to the to-be-sealed Exhibit 2257; (ii) limiting use of confidential information to the purposes of this proceeding as opposed to other purposes (including business or competitive purposes, for example); and (iii) specifying a timeframe during which those in possession of confidential information must destroy it. These limited modifications to the Default Protective Order are justified to

⁴ Subsequent to the filing of the Combined Motion, the Board issued the July 2019 Trial Practice Guide Update (“2019 TPG Update”), that attached a revised Default Protective Order as Appendix B. The redline comparison provided by Patent Owner is between the Modified Protective Order and the Default Protective Order in place prior to the 2019 TPG Update. However, the differences between the prior Default Protective Order and the revised Default Protective Order attached to the 2019 TPG Update do not appear to be materially significant as relates to these cases.

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provide clarity to the parties as to treatment of the sealed, highly confidential information.

Paper 29, 1.

Patent Owner further states that provisions of the Modified Protective Order do not conflict with any provision of the Default Protective Order and do not impact the Board or the public. *Id.*

Upon review of the proposed Modified Protective Order, and in the absence of opposition from Petitioner, we find good cause for entry of the Modified Protective Order.

Motion to Seal Exhibit 2257

A party moving to seal must show “good cause” for the relief requested. 37 C.F.R. § 42.54(a). The “good cause” standard for granting a motion to seal reflects the strong public policy towards making information in an *inter partes* review open to the public. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3 (PTAB Jan. 19, 2018) (informative) (citing *Garmin Int’l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, Paper 34 (PTAB Mar. 14, 2013), and *Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Papers 46, 47, 49 (PTAB Apr. 6, 14, 17, 2015) for guidance on how to establish “good cause.” When assessing if the good cause standard has been met, we may consider whether the information at issue is truly confidential, whether harm would result upon public disclosure, whether there exists a genuine need to rely in the trial on the specific information sought to be sealed, and whether the interest in maintaining confidentiality as to the information outweighs the strong public interest in an open record. *See id.* at 4.

Patent Owner argues that good cause exists for sealing Exhibit 2257, and states that Petitioner does not oppose the motion to seal Exhibit 2257. Paper 29, 4. Patent Owner advances several arguments in support of its motion to seal Exhibit 2257. *Id.* at 4–6.

Patent Owner argues that Exhibit 2257 “contains information relating to highly-confidential business information that is competitively sensitive.”⁵ Paper 29, 4. According to Patent Owner, Exhibit 2257 contains information about settlement and license terms between Patent Owner and a third party, Alder Bio, which is of the nature contemplated as protectable under Fed. R. Civ. P. 26(c)(1)(G). *Id.* at 5. Patent Owner thus asserts that public disclosure would cause significant competitive harm to Patent Owner and a third party (Alder Bio) that is not part of these proceedings. *Id.*

Patent Owner also argues that the public interest “is at best slight” and that “[a] mostly unredacted version of Exhibit 2257 has already been publicly filed in this case.” *Id.* Patent Owner asserts that none of its “arguments cite to or rely upon any of the confidential information that is redacted from that public document.” *Id.* at 6.

In balancing the need for protecting the redacted information in Exhibit 2257 against the public’s interest in maintaining a complete and understandable file history, we find that good cause exists for sealing the confidential unredacted version of Exhibit 2257 filed July 1, 2019. Therefore, Patent Owner’s Motion to Seal is granted.

⁵ Counsel for Patent Owner certifies, on behalf of Patent Owner, that the information sought to be sealed has not, to Patent Owner’s knowledge, been published or otherwise made public by Patent Owner. Paper 29, 6.

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