

IN THE 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 IPR2018-01710
Patent 8,586,045 B2

**PATENT OWNER'S COMBINED MOTION FOR ENTRY OF MODIFIED
PROTECTIVE ORDER AND MOTION TO SEAL EXHIBIT 2257**

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Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

I. Requested Relief

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Teva Pharmaceuticals International GmbH submits this Combined Motion For Entry of a Modified Protective Order and Motion to Seal Confidential Information.

First, Teva requests that the Board enter the Modified Protective Order (attached herewith as Addendum A). A redline version showing differences between Addendum A and the Default Protective Order is attached as Addendum B. 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 provide clarity to the parties as to treatment of the sealed, highly confidential information. They do not conflict with any provision of the Default Protective Order, and they do not impact the Board or the public.

Second, Teva requests that Exhibit 2257 be treated as Confidential Information and kept under seal pursuant to 37 C.F.R. § 42.14. Good cause exists to seal this exhibit because it contains competitively sensitive information, including immaterial, yet confidential business information.

Teva has conferred with Petitioner regarding these Motions. While Petitioner does not concede that the information redacted in Exhibit 2257 is immaterial, Petitioner has confirmed that it will not oppose either Motion.

II. Motion to Enter Modified Protective Order

Teva seeks entry of the Modified Protective Order (Addendum A) to protect its confidential information and to provide clarity to the involved parties.

The Modified Protective Order differs from the Default Protective Order in three ways. First, the Modified Protective Order limits review of the confidential information in Exhibit 2257 to (i) Petitioner's outside counsel only; (ii) the Office; (iii) an expert; and (iv) necessary support/administrative personnel. Access for the Office, expert, and necessary support/administrative personnel is the same as that provided under the Board's Default Protective Order. Thus, the proposed modification to access relates only to limiting access to Petitioner's outside counsel only. This modification is justified due to the existence of the related litigation and the competitive sensitivity of the information contained in this exhibit. This modification does not impact the Board or the public—only the parties.

Second, the Modified Protective Order limits use of confidential information to the purposes of this proceeding as opposed to other purposes (including business or competitive purposes, for example) and specifically mandates that the confidential information shall not be used or otherwise communicated in the

context of settlement negotiations relating to this proceeding or in the case captioned *Teva Pharmaceuticals International GmbH v. Eli Lilly and Company*, Civ. No. 1-18-cv-12029 (D. Mass.). This modification is justified due to the existence of the related litigation and the competitive sensitivity of the information contained in this exhibit. This modification does not impact the Board or the public—only the parties.

Third, the Modified Protective Order provides a clarifying timeline for the destruction of any confidential information produced in this proceeding that is held by any of the parties, including any confidential information incorporated therefrom into briefing or other documents—namely, within thirty (30) days following (A) a final written decision in this proceeding, or (B) the conclusion of any appeal therefrom, whichever comes later. This modification is reasonable and protects the confidential information. This modification does not impact the Board or the public—only the parties.

These limited modifications to the Default Protective Order are justified due to the existence of the related litigation and the competitive sensitivity of the information contained in this exhibit and potentially others. The modifications do not conflict with any provision or requirement of the Default Protective Order. The modifications pertain exclusively to the handling of confidential information by and among the involved parties and none will impact any public interest.

Petitioner has agreed to the modifications to the protective order and indicated it will not oppose this motion.

For the foregoing reasons, Teva requests that the Board accept and enter the Modified Protective Order provided herewith as Addendum A.

III. Motion to Seal Exhibit 2257

Good cause exists for sealing Exhibit 2257. The Board may issue this order “for good cause.” 37 C.F.R. § 42.54. For good cause, the Board needs to know why information sought to be sealed constitutes confidential information. *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 36, Decision on Revised Mot. to Seal, p. 4 (P.T.A.B. Apr. 5, 2013). The Board then balances the needs in protecting the information against the public’s interest in maintaining a complete and understandable file history. *Id.* at 8. In this case, the information sought to be sealed is highly-confidential, competitively-sensitive business information that is immaterial to Patent Owner’s argument. Further, the public has little, if any, interest in accessing this information. Accordingly, good cause exists to seal Exhibit 2257.

Petitioner has indicated that it will not oppose this motion.

A. Exhibit 2257 contains immaterial confidential business information.

There is good cause to seal Exhibit 2257 because it contains information relating to highly-confidential business information that is competitively sensitive.

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