

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN INSTITUTIONAL LLC,
Petitioner,

v.

NOVO NORDISK A/S,
Patent Owner.

Case IPR2020-00324
Patent 8,114,833

**PATENT OWNER'S MOTION TO SEAL AND FOR ENTRY OF A
PROTECTIVE ORDER PURSUANT TO 37 C.F.R. § 42.54**

Patent Owner Novo Nordisk A/S (“Novo Nordisk”) hereby moves for entry of the Protective Order appended as Addendum A and further moves to seal its Patent Owner Response and certain Exhibits, including two declarations, submitted with its Patent Owner Response as described herein. Novo Nordisk and Petitioner Mylan Institutional LLC (“Mylan”) have discussed this Motion, and Mylan does not oppose this Motion.

I. MOTION FOR ENTRY OF A PROTECTIVE ORDER

Pursuant to 37 CFR § 42.54(a), a motion to seal must be accompanied by a proposed protective order and a certification that the parties have met-and-conferred regarding the issue. On September 16, 2020 and September 18, 2020, Novo Nordisk emailed counsel for Mylan to notify Mylan of Novo Nordisk’s intent to file the Motion and propose that the parties adopt the Board’s default protective order (appended as Addendum A). Mylan had no objections to the requests made in this Motion. Novo Nordisk respectfully requests that the Board’s default protective order be entered in this proceeding.

II. MOTION TO SEAL

Pursuant to the stipulated protective order and 37 C.F.R. §§ 42.54 and 42.55, Novo Nordisk moves to seal (i) its Patent Owner Response submitted concurrently with this motion; (ii) the Declarations of Peter M. Tessier, Ph.D. (Ex2022) and Dorthe Kot Englund (Ex2023), submitted in support of its Patent Owner Response;

and (iii) the following additional Exhibits submitted in support of its Patent Owner Response:

- Exhibits 2050-53
- Exhibits 2055-60
- Exhibits 2062-75

Novo Nordisk has also concurrently with this Motion filed redacted, non-confidential versions of the Patent Owner Response (Paper 21) and the Declaration of Peter M. Tessier, Ph.D. (Ex2080), which Novo Nordisk consents may be made available on the public docket. The Declaration of Dorthe Kot Englund (Ex2023) and Exhibits 2050-53, 2055-60, and 2062-75, however, are confidential in their entirety and are submitted to the Board with this motion for filing under seal. Novo Nordisk is serving Mylan, concurrently with this Motion, copies of all Papers and Exhibits being filed today, including those under seal, as well as redacted non-confidential versions of Paper 21 and Exhibit 2080.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. Good cause exists here because the Patent Owner Response and Exhibits that are the subject of this Motion contain confidential, non-public research and development information in the form of proprietary clinical and scientific data. *See also, e.g.* Ex2024 at ¶¶ 7-16 (establishing Ex2051, Ex2055, Ex2057, Ex2058, Ex2059, Ex2060, Ex2064, Ex2068, and Ex2072 as Novo Nordisk business records);

Ex2025 at ¶¶ 7-9 (establishing Ex2068 as a Novo Nordisk business record). In other *inter partes* review proceedings, the Board has held that confidential information similar to the information in Novo Nordisk’s Patent Owner Response and Exhibits thereto should remain under seal. *See, e.g. Apotex Inc. v. Wyeth LLC*, IPR2014-00115, Paper 93 (PTAB Apr. 20, 2015) (granting motion to seal with respect to confidential research and development documents that were not publicly available); *Celltrion, Inc. v. Genentech, Inc.*, IPR2016-01667, Paper 20 (PTAB Aug. 18, 2017) (granting motion to seal with respect to “non-public research development information in the form of proprietary clinical and scientific data concerning rituximab, and confidential information about drug development and regulatory approval strategies”). Moreover, the public policy for making all information filed in *inter partes* review proceedings available to the public should not apply here because the information that Novo Nordisk requests to keep confidential does not affect the rights of the public.

III. CONCLUSION

For the foregoing reasons, Novo Nordisk respectfully requests that the Board grant this motion to seal and for entry of a protective order.

Dated: September 18, 2020

Respectfully submitted,

/s/ Jeffrey J. Oelke (Electronically signed)
Jeffrey J. Oelke, Reg. No. 37,409
Lead Counsel

Ryan P. Johnson
Laura T. Moran
Back-Up Counsel

Fenwick & West LLP
902 Broadway, Suite 14
New York, NY 10010
(212) 430-2600
joelke@fenwick.com
ryan.johnson@fenwick.com
laura.moran@fenwick.com

Counsel for Patent Owner Novo Nordisk A/S

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.