

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PFIZER INC.,¹
Petitioner,

v.

NOVO NORDISK A/S,
Patent Owner.

IPR2020-00324²
Patent 8,114,833 B2

Before ERICA A. FRANKLIN, JOHN G. NEW, and
SUSAN L. C. MITCHELL, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

DECISION

Granting-in-Part Patent Owner's Motion to Seal
and for Entry of a Protective Order
37 C.F.R. §§ 42.14 and 42.54

¹ The proceeding has been terminated as to the original petitioner, Mylan Institutional LLC. Paper 67.

² IPR2020-01252 has been joined with this proceeding. *See* Paper 33.

I. INTRODUCTION

Patent Owner moves for entry of the Board’s default protective order and to seal its Patent Owner Response (Papers 20, 25)³ and Exhibits 2022, 2023, 2050–53, 2055–60, 2062–75. Paper 22 (“Mot.”). The motion is unopposed. For the reasons explained below, we grant Patent Owner’s request for entry of the Board’s default protective order and Patent Owner’s motion to seal the confidential versions of the Patent Owner Response and Exhibit 2022, as well as Exhibits 2050–53, 2055–60, 2062–75, in their entirety. However, as explained below, we deny without prejudice Patent Owner’s motion to seal Exhibit 2023 in its entirety.

II. DISCUSSION

A. Default Protective Order

Patent Owner certifies, pursuant to 37 C.F.R. § 42.54, that the parties have conferred in good faith, and agree that the Board’s Default Protective Order will govern the treatment of material designated and sealed as confidential information in this proceeding. *See* Paper 22, 1. Based on that certification, Patent Owner’s request to enter the Board’s Default Protective Order, Paper 22, Addendum A, in this proceeding is *granted*.

B. Motion to Seal

“There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in an issued

³ Patent Owner originally filed the confidential version of the Patent Owner Response as Paper 20. With our authorization, Patent Owner subsequently filed a corrected confidential version of the Patent Owner Response as Paper 25, which only added page numbers.

patent and therefore affects the rights of the public.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, Paper 34, 1–2 (PTAB Mar. 14, 2013). A motion to seal may be granted for good cause. 37 C.F.R. § 42.54. The moving party bears the burden of showing that there is good cause for the relief requested, including why the information is appropriate to be filed under seal. 37 C.F.R. §§ 42.20, 42.54; *see also Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative) (discussing factors the Board may consider when deciding whether to grant a motion to seal documents asserted to contain confidential information). The Patent Trial and Appeal Board Consolidated Trial Practice Guide (“CTPG”) notes that 37 C.F.R. § 42.54 identifies confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. CTPG at 19.⁴

In the motion, Patent Owner asserts that “[g]ood 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.” Mot. 2. Patent Owner has provided a redacted, public version of the Patent Owner Response (Paper 21) and the Declaration of Peter M. Tessier, Ph.D. (Exhibit 2080). *Id.* According to Patent Owner, the remaining exhibits subject to the motion are confidential in their entirety. *Id.* That appears to be true for

⁴ November 2019 Edition, *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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Exhibits 2050-2053, 2055–2060, and 2062–2075, which comprise confidential clinical testing protocols and investigations. However, Patent Owner has not demonstrated that the Declaration of Dorthe Kot Engelund (Exhibit 2023) should be sealed in its entirety. For example, we do not see any material in paragraphs 1–9 of the declaration that discusses “confidential, non-public research and development information in the form of proprietary clinical and scientific data,” or any other matter that may be considered confidential.

Thus, we determine that Patent Owner has shown good cause to seal the confidential version of the Patent Owner Response (Papers 20 and 25 (corrected Patent Owner Response)) and the confidential version of the Declaration of Peter M. Tessier, Ph.D. (Exhibit 2022), as well as Exhibits 2050–53, 2055–60, 2062–75, in their entirety. However, we do not find good cause to seal the Declaration of Dorthe Kot Engelund (Exhibit 2023) in its entirety. For that matter, we exercise our discretion to maintain Exhibit 2023 under a provisional seal to permit Patent Owner an opportunity to file a renewed motion to seal the exhibit, along with a redacted, public version of the exhibit, as may be appropriate.

III. ORDER

Accordingly, it is

ORDERED that Patent Owner’s Motion for Entry of the Default Protective Order is *granted*;

FURTHER ORDERED that the Default Protective Order is hereby entered in these proceedings and shall govern the treatment and filing of confidential information;

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FURTHER ORDERED Patent Owner's Motion to Seal is granted-in-part, wherein we grant the motion to seal with respect to the confidential versions of the Patent Owner Response (Papers 20, 25) and Exhibit 2022, as well as Exhibits 2050–53, 2055–60, 2062–75, in their entirety;

FURTHER ORDERED that Patent Owner's Motion to seal is denied without prejudice with respect to sealing Exhibit 2023 in its entirety; and

FURTHER ORDERED that Exhibit 2023 shall be maintained under a provisional seal to permit Patent Owner an opportunity to file a renewed motion to seal the exhibit, along with a redacted, public version of the exhibit, as may be appropriate.

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