

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

REGENERON PHARMACEUTICALS, INC.,
Petitioner,

v.

NOVARTIS PHARMA AG,
NOVARTIS TECHNOLOGY LLC,
NOVARTIS PHARMACEUTICALS CORPORATION,
Patent Owner.

Case No. IPR2021-00816
U.S. Patent No. 9,220,631

**JOINT MOTION TO SEAL
THE FINAL WRITTEN DECISION**
37 CFR §§ 42.14 AND 42.54

I. PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner Regeneron Pharmaceuticals, Inc. (“Petitioner” or “Regeneron”) and Patent Owners Novartis Pharma AG, Novartis Technology LLC, and Novartis Pharmaceuticals Corp. (“Patent Owner” or “Novartis”) respectfully move to seal portions of Paper No. 113, the Board’s October 25, 2022 Final Written Decision (“Final Written Decision” or “FWD”), and file a public redacted version of the Final Written Decision. A proposed public version of the Final Written Decision with redactions agreed-upon by the parties has been filed concurrently as Ex. 1257.

II. REASONS FOR THE REQUESTED RELIEF AND STATEMENT OF FACTS

A. Good Cause Exists for Sealing Confidential Information

The Board will seal documents for good cause. *See* 37 C.F.R. § 42.54(a); *see also* *Argentum Pharms. LLC v. Alcon Research, Ltd.*, Paper 27, 2 (2013). “The rules aim to 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.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (2012). The public’s interest in having access to confidential business information that is only indirectly related to patentability is “minimal.” *Garmin v.*

Cuozzo, IPR2012-00001, Paper 36, 8-9 (2013) (granting a motion to seal an agreement relating to the “commercializ[ation]” of the patent-at-issue).

The information that Petitioner and Patent Owner seek to seal is either Regeneron’s confidential research and development information, Novartis’s confidential research and development information, Novartis’s confidential commercial and financial information, Novartis’s confidential product information, or third party confidential information, as explained in more detail below. To the undersigned’s knowledge, the information sought to be sealed has not been published or otherwise made public. Public disclosure of Regeneron’s, Novartis’s or third party confidential information would competitively harm Regeneron’s, Novartis’s, and/or third parties’ business prospects and put these companies at a competitive disadvantage relative to other similarly positioned companies in the same industry. Therefore, good cause exists to seal portions of the Final Written Decision.

B. Good Cause Exists for Sealing Regeneron’s Confidential Information

Portions of the Final Written Decision contain confidential information concerning the specifications of Regeneron’s product. *See* FWD at 58, 61, 115 (discussing confidential product specifications of EYLEA PFS). This confidential and proprietary information of Regeneron, if publicly disclosed, would substantially harm Regeneron’s competitive position in the pharmaceutical

industry. For example, this information, if not sealed, would allow competitors to use such information to improve its products. Therefore, good cause exists to seal Regeneron's confidential information described in the Final Written Decision and file a public redacted version of the Final Written Decision.

C. Good Cause Exists for Sealing Novartis's Confidential Information

Portions of the Final Written Decision contain Novartis's confidential research and development information. *See* FWD at 40 (discussing Novartis's internal presentations relating to drug development); 42, 46, 52, 97-98 (discussing Novartis's confidential correspondences with third parties regarding product development). The Final Written Decision also contains Novartis's confidential commercial and financial information. *See* FWD at 44, 89 (discusses confidential sale and revenue figures for Novartis's products); 53, 98-99 (discussing terms of Novartis's confidential commercial contract with third party); 85 (discussing confidential results of marketing studies); 48, 83-84, 85-86 (referencing Novartis employees' confidential testimonies regarding Novartis's marketing strategy and results). Moreover, portions of the Final Written Decision contain Novartis's confidential information relating to product specifications and features. *See* FWD at 48-50, 75-79, 81-83, 87, 90, 112 (discussing confidential specifications and features of Lucentis PFS).

Such confidential and proprietary research, commercial, and product specification information of Novartis, if publicly disclosed, would substantially harm Novartis's competitive position in the pharmaceutical industry. For example, this information, if not sealed, would provide competitors with valuable information regarding confidential research and development projects, as well as sensitive financial and market information. Such information could also be used by a competitor to improve its products. Therefore, good cause exists to seal Novartis's confidential information and file a public redacted version of the Final Written Decision.

D. Good Cause Exists for Sealing Third Party Confidential Information

Portions of the Final Written Decision contain third party confidential information relating to product specifications. *See* FWD at 45, 56, 64, 72, 91, 92 (discussing third party Bausch's confidential product specification information); 51, 92, 98 (discussing third party Becton Dickinson's confidential product information). The Final Written Decision also contains third party confidential development and research information. *See* FWD at 45-46, 52, 72-73, 94-96 (discussing third party's confidential product development process).

Public disclosure of the proposed redacted information would harm these third parties, because insights into third parties' technical and development information would provide a competitive advantage to such third parties'

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.