

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 Owners

Case IPR2021-00816
Patent 9,220,631

PATENT OWNERS' FIFTH MOTION TO SEAL

Pursuant to 37 C.F.R. §§ 42.14, 42.22, and 42.54, Patent Owners Novartis Pharma AG, Novartis Technology LLC, and Novartis Pharmaceuticals Corporation (collectively, “Novartis”) respectfully request that the Board seal portions of Novartis’s Surreply to Petitioner’s Reply (“Surreply”), portions of Exhibits 2339, 2345, and 2347, which contain Novartis’s confidential research and development information of Patent Owner, confidential research and development information of third parties, and employee personal information. Novartis also moves to seal the entirety of Exhibits 2341-2344, 2346, and 2348-2352.

In determining whether to grant a Motion to Seal, the Board must find “good cause” to seal the information in question and “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.” 37 C.F.R. § 42.54(a); Consolidated Trial Practice Guide November 2019 at 19. As described in the *Consolidated Trial Practice Guide*, the Board 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.” *Id.*

The information that Novartis seeks to seal in this motion is subject to contractual or statutory obligations of confidentiality to third party companies or

individuals, as explained in more detail below. To the undersigned's knowledge, the information that Novartis seeks to seal is non-public and proprietary. Public disclosure of Novartis's confidential information would competitively harm Novartis's business prospects and put Novartis at a competitive disadvantage relative to other similarly positioned companies in the same industry. In addition, we are advised by Swiss counsel that public disclosure of the third party confidential information or personal information of employees could subject Novartis to civil and criminal penalties under the laws of Switzerland. As such, good cause exists to seal portions of Novartis's Surreply, portions of Exhibits 2339, 2345, and 2347 and the entirety of Exhibits 2341-2344, 2346, and 2348-2352

Novartis's Surreply

Novartis seeks to seal the portions of its Surreply that discuss confidential information in the Exhibits that Novartis currently seeks to seal. For the same reasons that these exhibits should be sealed as disclosed below and has previously submitted, there is good cause to seal the portions of the Surreply that include confidential information appearing in at least Exhibits 2339 and 2341-2352.

Exhibits 2339, 2341, 2345 and 2347-2348 (IPR Deposition Transcripts)

Exhibits 2339, 2341, 2345, and 2347-2348 are cross-examination deposition transcripts of Regeneron's witnesses taken in this IPR proceeding. Novartis seeks

to seal portions of Ex. 2339 (Agalloco Dep. Tr.), Ex. 2345 (Kiss Dep. Tr.) and Ex. 2347 (Koller Dep. Tr.), and the entirety of Ex. 2341 (Graham Dep. Tr.) and Ex. 2347 (Koller Dep. Tr.).

Each of Exhibits 2339, 2341, 2345, and 2347-2348 contain at least one declaration from each of these witnesses in this IPR proceeding, whereas the deposition transcripts of these witnesses discuss such declaration. *See e.g.*, Ex. 2339.005 at 16:1-4 (discussing confidential Ex. 1100); Ex. 2341.005 at 15:21-16:5 (discussing confidential Ex. 1102); Ex. 2345.007 at 7:9-12 (discussing confidential Ex. 1106); Ex. 2347.005 at 244:2-244:13 (discussing confidential Ex. 1105); Ex. 2348.003 at 7:1-6). Accordingly, good cause exists to seal portions of Exhibits 2339, 2345, and 2347, and the entirety of 2341 and 2347.

Exhibit 2346 (Becton Dickinson Witness Deposition Transcript)

Exhibit 2346 is a deposition transcript of third party witness of Becton Dickinson & Co.'s ("BD") taken in this IPR proceeding. Novartis seeks to seal Exhibit 2346.

This deposition discusses multiple documents that contain BD's confidential and proprietary development, research, and sales information. These documents were part of the record developed in the ITC action, and in that action, these documents were subject to a protective order requiring that these documents only be accessible by outside counsel. The parties to this IPR proceeding have

agreed to modify the protective order in this action to extend the same level of protection for these documents as was provided in the ITC action. See Exhibit 2323. Novartis relies on these exhibits to rebut Regeneron's arguments concerning the '631 patent claims.

For example, Ex. 2346.005 at 17:3-9 discusses a communication between BD and a third party relating to BD's confidential and technical information. At Ex. 2346.011 at 40:15-21 discusses a declaration of a BD employee describing BD's confidential information related to certain BD products.

Public information in Exhibit 2346 would harm BD, a third party, because insights to BD's technical and business information would provide a competitive advantage to BD's competitors to its detriment. For example, such information could also be used by a competitor to improve its products. Therefore, good cause exists to seal Exhibit 2346.

Exhibits 2342-2344, 2349-2352 (Regeneron Confidential Documents)

Exhibits 2342-2344 and 2349-2352 are Regeneron internal documents containing its confidential and proprietary research, development, manufacture, and business information. Exhibits 2342-2343 and 2349-2352 were part of the record developed in the ITC action, and in that action, these documents were subject to a protective order requiring that these documents only be accessible to outside counsel. The parties to this IPR proceeding have agreed to modify the

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