

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.

IPR2021-00816
Patent 9,220,631 B2

Before ERICA A. FRANKLIN, ROBERT L. KINDER, and
JAMIE T. WISZ, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Third, Fourth, and Fifth Motions to Seal;
Granting Patent Owner's Motion for Entry of Second Modified Default
Protective Order

37 C.F.R. §§ 42.14 and 42.54

I. Introduction

Novartis Pharma AG, Novartis Technology LLC, and Novartis Pharmaceuticals Corporation (collectively, “Novartis” or “Patent Owner”) filed a Third Motion to Seal portions of the Patent Owner’s Response (Paper 35, “PO Resp.”), portions of Patent Owner’s Motion to Amend (Paper 37, “MTA”), and Exhibits 2099–2115, 2119–2121, 2123, 2124, 2126, 2128–2134, 2136–2148, 2150, 2155–2159, 2166–2172, 2194, 2201, 2203–2206, 2208, 2224, and 2254. Paper 38, 1 (“Third Mot.”). Along with the Third Motion, Patent Owner filed redacted public versions of the exhibits listed above, excepting Exhibits 2099–2115, 2132, and 2194, which were subject to a protective order in a related proceeding before the International Trade Commission (“ITC”) regarding U.S. Patent No. 9,220,631 (“the ’631 patent”) and contain third party confidential information. Redacted public versions of Patent Owner’s Response (Paper 40) and Motion to Amend (Paper 36) have also been filed.

In its Third Motion, Patent Owner also moves for entry of a Second Modified Default Protective Order (Ex. 2323), and Petitioner does not oppose. Third. Mot. 1.

Patent Owner also filed a Fourth Motion to Seal Exhibits 2337 and 2338.¹ Paper 85, 1 (“Fourth Mot.”). Patent Owner did not file a redacted public version of Exhibit 2337, which was subject to the ITC protective order and contains third party confidential information.

¹ Exhibit 2338 has been expunged.

Patent Owner also filed a Fifth Motion to Seal portions of Patent Owner's Surreply to Petitioner's Reply (Paper 92, "Surreply"), Exhibits 2339, 2345, and 2347 (unredacted versions), and Exhibits 2341–2344, 2346, and 2348–2352. Paper 90, 1 ("Fifth Mot."). Along with the Fifth Motion, Patent Owner filed public redacted versions of Exhibits 2339, 2345, and 2347 (Exs. 2339, 2345, and 2347) and a redacted public version of Patent Owner's Surreply to Petitioner's Reply (Paper 93). Patent Owner has not filed redacted public versions of Exhibits 2341–2344, 2346, and 2348–2352, which were subject to the ITC protective order.

For the reasons set forth below, Patent Owner's Third, Fourth, and Fifth Motions to Seal are *granted*.

II. *Motion to Seal Legal Standard*

"There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public." *Garmin Int'l v. Cuozzo Speed Techs., LLC*, IPR2012–00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). The record for an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 326(a)(1); 37 C.F.R. § 42.14. The standard for granting a motion to seal is "good cause." 37 C.F.R. § 42.54; *see also Argentum Pharms. LLC v. Alcon Res., Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (Informative) (describing the "good cause" standard). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. *See Argentum*, Paper 27 at 3–4

("[A] movant to seal must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.").

III. Patent Owner's Motions to Seal

In its Third Motion, Patent Owner attests that the documents it seeks to seal contain truly confidential information. Third Mot. 2 (stating "Novartis's confidential research and development related to the subject matter of U.S. Patent No. 9,220,631 ("the '631 patent"), Novartis's confidential commercial information, third party confidential information, or information that is subject to contractual or statutory obligations of confidentiality to third party companies or individuals has not been published or otherwise made public"). Patent Owner also attests a concrete harm would result upon public disclosure of the information. *Id.* at 2 (stating disclosure "would competitively harm Novartis's and/or the third parties' business prospects and put these companies at a competitive disadvantage" and "could subject Novartis to civil and criminal penalties under the laws of Switzerland"). Patent Owner attests that it relies on these documents to support its arguments regarding, for example, secondary considerations of non-obviousness. *Id.* at 3. Patent Owner further attests that the redactions in the documents it seeks to seal are "narrowly tailored." *Id.*

Patent Owner makes similar attestations in its Fourth and Fifth Motions to Seal. Fourth Mot. 2–3; Fifth Mot. 2–3.

We find Patent Owner's showing persuasive in establishing good cause to seal the identified documents, and we individually address each of Patent Owner's Third, Fourth, and Fifth Motions to Seal in more detail below.

1. Third Motion

- i. Exhibits 2099–2115, 2119–2121, 2123, 2124, 2126, 2128–2134, 2136–2148, 2150, 2155–2159, 2166–2172, 2194, 2201, 2203–2206, 2208, 2224, and 2254*

Exhibits 2120, 2126, 2128–2131, 2136–2145, 2150, 2224, 2254 are Patent Owner's confidential technical documents, including presentations discussing research and development of the '631 patent and project timelines, reports prepared for submission to regulatory authorities, and emails regarding creating a product. Third Mot. 3. Exhibits 2119, 2121, 2123, 2124, 2132–2134, 2146, 2147, and 2155–2159 are Patent Owner's confidential commercial information, specifically contracts between Patent Owner and third parties. *Id.* at 7. Exhibits 2099–2115, 2148, and 2194 are third party (i.e., Genentech, Inc.) confidential documents produced in the related ITC investigation. *Id.* at 9. Exhibits 2166–2172² are Patent Owner's confidential internal business and financial documents, and declarations discussing those documents. *Id.* at 10. Exhibits 2201, 2203–2206, and 2208 are Patent Owner declarations, filed in support of Patent Owner's briefs, that contain information regarding Patent Owner's and third party proprietary technical and development information, confidential business information of

² Patent Owner also lists Exhibit 2173. Third Mot. 10. However, this appears to be a harmless typographical error, as Exhibit 2173 has not been filed in this case.

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