

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC., CELLTRION, INC., and
APOTEX, INC.,
Petitioners

v.

REGENERON PHARMACEUTICALS, INC.
Patent Owner

Case IPR2021-00881¹
Patent 9,254,338 B2

PATENT OWNER'S MOTION TO SEAL

¹ IPR2022-00258 and IPR2022-00298 have been joined with this proceeding.

Pursuant to 35 U.S.C. § 316(a)(1) and 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Regeneron Pharmaceuticals, Inc. moves to seal the cross-examination deposition transcript of Ivan T. Hofmann, Petitioner’s commercial success rebuttal witness (Ex. 2289).

This exhibit was filed concurrently with Patent Owner’s Sur-Reply to Petitioner’s Reply. Petitioner does not oppose this Motion.

I. EXHIBIT TO BE SEALED AND REASONS FOR SEALING

The standard governing the Board’s determination of whether to grant a motion to seal is “good cause.” *Garmin Int’l, Inc. v. Cuozzo Speed Techs LLC*, Case IPR2012-00001, Paper 36 at 4 (April 5, 2013) (quoting 37 C.F.R. § 42.54). The Board aims 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.” *Id.*

Exhibit 2289 describes and includes Patent Owner and third-party’s confidential PROTECTIVE ORDER MATERIAL. *See e.g.* Ex. 2289 at 8:21-15:12 (discussing profits and costs associated with Patent Owner’s activities in connection with Eylea®), 26:10-20 (discussing confidential market metrics compiled and provided by third party data provider, Vestrum Health), 222:15-248:5 (discussing confidential Ex. 2176 (Q4 2020 Performance Update Wet AMD, DME, MEfRVO

& DR w/out DME)), 252:15-259:18 (discussing confidential Ex. 2138 (Physician ATU: Wave 2)). The information is confidential business information that is not publicly available; it is competitively sensitive and its inclusion in the public docket would cause commercial harm to Patent Owner and/or Vestrum.

The portions of Ex. 2289 that Patent Owner seeks to file under seal contain material that are either the confidential information of Vestrum, who has permitted its use in this proceeding subject to a protective order, or else consists of Patent Owner's own confidential business information that would cause competitive harm to Patent Owner were it to be disclosed publicly. Thus, the identified material meets the "good cause" standard to be maintained under seal and available only to the parties and Board.

Accordingly, Patent Owner moves to seal the foregoing exhibit, and there is good cause for it to be maintained under seal.

II. PROTECTIVE ORDER

Pursuant to 37 CFR §§ 42.54 and 42.55(a), Patent Owner filed a motion for entry of the Board's default protective order. *See* Paper No. 34. Petitioner did not oppose Patent Owner's motion.

III. CERTIFICATION

Pursuant to 37 CFR § 42.54, Patent Owner certifies that it has conferred with Petitioner regarding this motion to seal. Petitioner does not object to the motion to seal.

Dated: July 6, 2022

Respectfully Submitted,
/s/ Deborah E. Fishman
Deborah E. Fishman (Reg. No. 48,621)
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Palo Alto, CA 94304

**Counsel for Patent Owner,
Regeneron Pharmaceuticals, Inc.**

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned Certifies that on July 6, 2022, a true and entire copy of this **PATENT OWNER'S MOTION TO SEAL** was served via e-mail to the Petitioner at the following email addresses:

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