

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

REGENERON PHARMACEUTICALS, INC.,
Patent Owner.

IPR2021-00880 (Patent 9,669,069 B2)¹
IPR2021-00881 (Patent 9,254,338 B2)²

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

PER CURIAM.

ORDER³

Granting Patent Owner's Unopposed Motions for Entry
of Default Protective Order and to Seal and Petitioner's Motion to Seal
37 C.F.R. § 42.54

¹ IPR2022-00257 and IPR2022-00301 have been joined with this proceeding.

² IPR2022-00258 and IPR2022-00298 have been joined with this proceeding.

³ The combined caption is for administrative convenience only and does not indicate that IPR2021-00880 and IPR2021-00881 have been joined. The parties are not authorized to use this caption without express permission of the Board.

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Regeneron Pharmaceuticals Inc. (“Patent Owner”) moves, in each of the captioned proceedings, for entry of its proposed default protective (“Proposed Protective Order”). *See* Paper 34.⁴ Patent Owner additionally seeks to seal Exhibits 2048, 2049, 2059, 2060, 2073, 2096, and 2128. Paper 37. In IPR2021-00881, Patent Owner has also filed a corrected motion seeking to seal Exhibits 2052, 2138, 2140, and 2163 and, subsequently, an additional motion to seal Exhibit 2289. IPR2021-00881, Paper 42, 2 and Paper 74, 2. Patent Owner has indicated that Mylan Pharmaceuticals Inc. (“Petitioner”) does not oppose these motions. Paper 34, 2 and Paper 37, 5.

Petitioner has also filed a motion to seal portions of Petitioner’s Reply to Patent Owners’ Response and portions of Exhibits 1114, 1108, and 1111. Paper 55, 2. In IPR2021-00881, Petitioner seeks to seal portions of Petitioner’s Reply and Exhibits 1137, 1108, 1111, and 1151. IPR2021-00881, Paper 60, 2. Petitioner reports that Patent Owner does not oppose this motion. *See, e.g.*, Paper 55 2

For the reasons set forth below, Patent Owner’s unopposed motion of entry of its default protection order, and both parties’ unopposed motions to seal are GRANTED.

DISCUSSION

1. Default Protective Order

Patent Owner certifies, pursuant to 37 C.F.R. § 42.54, that the parties have conferred and that Petitioner does not oppose entry of the default

⁴ Unless otherwise indicated, references to papers are those filed in IPR2021-00880.

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protective order. Paper 34 Addendum A. Patent Owner represents that good cause exists because Patent Owner intends to submit non-public confidential research, development and commercial information with its forthcoming Patent Owner's Response that it seeks to maintain as confidential. *Id.* at 2.

“The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information, including, ... (7) Requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way.” 37 C.F.R. § 42.54 (a)(7). We agree with Patent Owner that good cause exists for entry of the default protective order, and Patent Owner's motion is consequently granted.

2. *Patent Owner's and Petitioner's Motions to Seal*

The parties must each show good cause for the relief requested, including why the information is appropriate to be filed under seal. 37 C.F.R. § 42.54. The Office Patent Trial Practice Guide 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. 77 Fed. Reg. at 48,760. In *Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (P.T.A.B. January 19, 2018) (informative), the Board set forth the factors we consider when deciding whether to grant a motion to seal

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documents asserted to contain confidential information. Those factors include, whether the moving party has demonstrated 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.

Id.

A. Patent Owner's Motions to Seal

In each of its motions to seal, Patent Owner describes each of the exhibits that it seeks to seal. *See, e.g.*, Paper 37, 1. For each exhibit, Patent Owner filed an unredacted version as a “Board Only” version, and a redacted version as a “Public” version.

Briefly, Patent Owner argues that: (1) Exhibit 2073 is a confidential partner technical document; (2) Exhibits 2059, 2060, 2200, 2218, 2229, 2263, and 2285 are confidential regulatory, commercial, or financial documents; (3) Exhibits 2096 and 2128 are confidential agreements regarding clinical trials; and (4) Exhibits 2048, 2049, 2052, and 2289 are declarations including or describing confidential information. Paper 37, 3–4; IPR2021-00881, Paper 74, 2–3. Furthermore, in IPR2021-00881, Patent Owner asserts that Exhibits 2169, 2170, 2060, 2200, 2218, 2229, 2263, and 2285 are confidential commercial or financial documents. IPR2021-00881, Paper 37 at 6–7. For each of these, Patent Owner asserts that the information contained in these exhibits are not publicly available and would

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cause competitive harm to Patent Owner if disclosed on the public docket.

Petitioner does not oppose Patent Owner's motion to seal. *Id.* at 2.

Upon considering the arguments and evidence, we determine that Patent Owner has satisfied the above-listed factors we consider when deciding whether to grant a motion to seal documents asserted to contain confidential information. We have reviewed the unredacted "Board Only" version of the exhibits. Based upon our review of the content of those exhibits, we find that they contain highly sensitive confidential information that would likely result in harm to Patent Owner if accessed by its competitors.

Accordingly, we determine that Patent Owner has shown good cause for the relief requested.

B. Petitioner's Motion to Seal

Petitioner asserts that: (1) Exhibits 1114 and 1137 are declarations including or describing confidential information; and (2) Exhibits 1108, 1111, and 1151 are cross-examination deposition transcripts of Patent Owner's witnesses taken in this IPR proceeding. Paper 55, 4–5 and Paper 60, 3–5. Additionally, Petitioner seeks to seal the portions of Petitioner's Reply in each trial that discuss Patent Owner's confidential information in Exhibits 2096 and 2259 and Petitioner's Exhibits s 1137, 1108, 1111, and 1151. Paper 55, 3 and Paper 60, 3.

Petitioner seeks to seal those portions of the Reply, declaration, or transcripts that describe and include Patent Owner's confidential protective order material, which Petitioner is obligated to file under seal. *Id.* Petitioner

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