

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SANDOZ INC.,
Petitioners,

v.

ACERTA PHARMA B.V.,
Patent Owner

Case IPR 2023-00478
Patent No. 10,272,083

PATENT OWNER'S MOTION TO SEAL

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Acerta Pharma B.V. respectfully moves to seal Exhibit 2004, which is a document produced by Patent Owner that contains the confidential business information of Patent Owner and the third party that is the counterparty to the agreement. Specifically, Exhibit 2004 is an agreement between Acerta's predecessor-in-interest and a third party which is in its entirety confidential, has never been made public, and contains non-public information that could be improperly used by competitors to gain unfair business and competitive advantage.

“The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information . . .” 37 C.F.R. § 42.54(a). In *Argentum Pharmaceuticals LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (Jan. 19, 2018), the Board set forth the standard for sealing confidential information: “[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.” *Id.* at 3; *Unified Patents, LLC, v. Memoryweb, LLC*, IPR2021-01413, Paper 49 at 2-3 (P.T.A.B. Dec. 13, 2022).

While there is a presumption in favor of public disclosure, and the burden is on the movant to seal, application of the foregoing factors should be tempered by reasonableness, which is the touchstone of good cause. Overly harsh or stringent application of the “good cause” requirement would be contrary to Congress’ intent that IPRs be conducted in a “timely, fair, and efficient manner” as an alternative to expensive court litigation of patent validity. Trial Practice Guide, p. 2. As explained below, the *Argentum* factors confirm that the information Patent Owner seeks to protect from public disclosure should indeed be sealed in this Proceeding.

Truly Confidential. The rules identify 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. 37 C.F.R. § 42.54. Exhibit 2004 is a confidential business document. The document is an agreement between a third party and Acerta’s predecessor-in-interest that sets forth research, licensing, and business arrangements between the parties to that agreement. Execution of that agreement imposes a duty to maintain as confidential the information that is the subject of the agreement. In fact, the executed document itself contains several provisions related to “Confidentiality.” The third party consented to the production of the document under the condition that suitable steps would be taken to maintain the

confidentiality of the document. The specific information contained in this document is not available from any non-confidential sources.

Concrete Harm. The information sought to be sealed reflects confidential business and research information. This includes sensitive commercial information concerning the financial terms of the agreement, and also descriptions of proprietary information. That information could be improperly used by competitors to gain unfair business and competitive advantage. This kind of harm warrants sealing. *Ecobee Technologies Ulc, v. Causam Enterprises, Inc.*, IPR2022-01339, Paper 22 at 4, (P.T.A.B. Apr. 10, 2023); *Roku, Inc. & Vizio, Inc., v. Ancora Technologies, Inc.*, IPR2021-01406, Paper 35, at 1-3 (P.T.A.B. August 9, 2022) (sealing “patent license agreements” that “are confidential and thus have not been published or otherwise made public”).

Genuine Need to Rely Upon. Patent Owner relies on Exhibit 2004 to assert that one of the three references relied upon in the grounds raised in the Petition does not qualify as prior art under § 102(b)(2)(C) and § 102(c). Specifically, Acerta relies on EX2004 to show that the subject matter disclosed in both the alleged prior art and the challenged patent were developed and disclosed by parties to a joint research agreement. EX2004 is a version of that agreement in redacted form. The information that remains unredacted (that is relevant to the joint research agreement issue) is not available from any non-confidential sources and

may be relevant to the requirements set forth in § 102(b)(2)(C) and § 102(c). As a result, Acerta has a genuine need to rely on Exhibit 2004.

Balancing. The third party allowed Acerta to produce the redacted document on the condition that only information potentially relevant to the joint research agreement exception was left unredacted, and that suitable steps would be taken to maintain the confidentiality of the unredacted portions of the document. Were the unredacted portions of the document to be made public, such action could have a chilling effect in future proceedings in which other third parties may be unwilling to agree to production of their confidential materials in connection with PTAB trials. Thus, granting of this motion to seal would ultimately benefit the public and the Board by reassuring third parties that they can participate in the discovery process before the PTAB without significant risk to their confidential information.

Further, Patent Owner does not seek to seal its Preliminary Patent Owner Response which provides background on Exhibit 2004 and describes its relevance without disclosing specific confidential information. This strikes an appropriate balance of the public's qualified interest in having an open record, on the one hand, and the interest in maintaining a third party's confidential information on the other. The public will be able to comprehend and understand the issues to be decided without needing to see the underlying confidential agreement itself.

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