

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMNEAL PHARMACEUTICALS, LLC
Petitioner

v.

SUPERNUS PHARMACEUTICALS, INC.
Patent Owner

IPR2013-00368 (Patent 8,206,740)
IPR2013-00371 (Patent 8,394,405)
IPR2013-00372 (Patent 8,394,406)

Before SCOTT E. KAMHOLZ, *Administrative Patent Judge*.

DECISION
Patent Owner's Motions to Seal
37 C.F.R. § 42.54

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IPR2013-00371 (Patent 8,394,405)

IPR2013-00372 (Patent 8,394,406)

Supernus has filed several Motions to Seal. *E.g.*, IPR2013-00368, Paper 37; Paper 75; Paper 81.^{1,2} Supernus proposes entry of the default protective order to govern the treatment and filing of confidential information in these proceedings. *E.g.*, Paper 37, 1-2. The default protective order, signed by both Amneal and Supernus, was filed as Exhibit 2171 in each case. Amneal has not filed an opposition to any of the Motions to Seal. For the reasons that follow, we grant the motions and enter the default protective order.

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. § 316(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. There is a strong public policy that favors making information filed in *inter partes* review proceedings open to the public. *See Garmin International v. Cuozzo Speed Technologies, LLC*, Case IPR2012-00001, slip op. at 1-2 (PTAB March 14, 2013) (Paper 34) (discussing the standards of the Board applied to motions to seal). 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. In addition, a motion to seal is required to include a certification that the moving party has, in good faith,

¹ Essentially identical motions were filed in IPR2013-00371 (Paper 38; Paper 75; Paper 83) and in IPR2013-00372 (Paper 36; Paper 72; Paper 79).

² All further references to papers are directed to IPR2013-00368.

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conferred, or attempted to confer, with the opposing party in an effort to come to an agreement on the scope of the protection sought. *See Garmin*, Paper 34 at 3.

A. First Motion to Seal

Supernus's first Motion to Seal accompanies the Patent Owner Response. Paper 37, 1. Supernus seeks to protect portions of the Patent Owner Response, declarations of its witnesses, and certain other evidentiary exhibits. *Id.* Supernus identifies the types of information in each document that warrant sealing. *Id.* at 7-13.

B. Second Motion to Seal

Supernus's second Motion to Seal accompanies its Motion for Observations. Paper 75, 1. Supernus seeks to seal portions of the deposition transcripts of Petitioner's witnesses. *Id.* at 2. Supernus also seeks to seal portions of declarations and deposition transcripts, along with certain other evidentiary exhibits, filed under seal by Amneal with its Reply but without a Motion to Seal. *Id.* Supernus identifies the types of information in each document that warrant sealing. *Id.* at 7-9.

C. Third Motion to Seal

Supernus's third Motion to Seal accompanies its Opposition to Amneal's Motion to Exclude Evidence. Paper 81, 1. Supernus seeks to seal portions of the Opposition, a witness declaration, and one other evidentiary exhibit. *Id.* at 2. Supernus identifies the types of information in each document that warrant sealing. *Id.* at 6.

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D. Analysis

Supernus's proposed redactions in the Response, Motion for Observations, Opposition, the declarations, and the deposition transcripts are reasonable and are limited strictly to isolated passages consisting entirely of confidential information, such that the thrust of the underlying argument or evidence is clearly discernable from the redacted versions. The redactions in the other evidentiary exhibits are more extensive, in many cases complete, but appropriate given the nature of the information sought to be protected. Supernus has explained satisfactorily the nature of the redacted information sought to be sealed, the nonpublication of the information, and Supernus's efforts to confer with Amneal on the scope of protection.

Upon consideration of Supernus's representations as to the nature of the redacted information, the appropriate use of redaction, and Amneal's acquiescence, we determine that Supernus has shown good cause that maintaining the confidentiality of the information outweighs the public interest in having access to it.

Supernus is reminded that the information subject to the protective order will become public if identified in a final written decision in this proceeding and that a motion to expunge the information will not necessarily prevail over the public interest in maintaining a complete and understandable file history. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012); Paper 17, 2-3; Paper 34, 3.

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Accordingly, it is

ORDERED that Supernus's first, second, and third Motions to Seal in each of IPR2013-00368, IPR2013-00371, and IPR2013-00372 are *granted*; and

FURTHER ORDERED that the proposed protective order, submitted as Exhibit 2171 in each proceeding, is entered, and governs the treatment and filing of confidential information in each proceeding.

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