

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LUPIN LTD., LUPIN PHARMACEUTICALS INC., INNOPHARMA
LICENSING, INC., INNOPHARMA LICENSING LLC, INNOPHARMA
INC., INNOPHARMA LLC, MYLAN PHARMACEUTICALS INC., and
MYLAN INC.,

Petitioners,

v.

SENJU PHARMACEUTICAL CO., LTD.,

Patent Owner.

Case IPR2015-01097¹
Patent 8,754,131 B2

Before FRANCISCO C. PRATS, ERICA A. FRANKLIN, and
GRACE KARAFFA OBERMANN, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

DECISION
Granting Petitioners' Motion to Expunge
37 C.F.R. § 42.56

¹ IPR2016-00089 has been joined with this proceeding.

On October 17, 2016, Petitioners filed a motion to expunge the sealed versions of Exhibit 2109 (an Abbreviated New Drug Application by Lupin) and Exhibit 2082 (declaration of Robert O. Williams, III., Ph.D.). Paper 76. Petitioners state that “Patent Owner does not oppose this motion.” *Id.* at 1.

The Rules of Practice for Trial before the Patent Trial and Appeal Board provide that:

Confidential information that is subject to a protective order ordinarily will become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial. There is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial. A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.

77 Fed. Reg. No. 157, Part V at Section I.E.6. (Aug. 14, 2012); *see also* 37 C.F.R. § 42.56 (“After denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.”).

The Board’s Default Protective Order has been entered in this proceeding. Paper 71. Additionally, we granted Petitioners’ Motion to Seal Exhibits 2109 and 2082. Paper 72. On September 12, 2016, a Final Written Decision was entered by the Board. Paper 70. Accordingly, in this proceeding, all documents filed subject to a protective order would normally be made public 45 days from that date.

Petitioners affirm that Exhibit 2109 is not cited or discussed in the Board’s Final Decision. *Id.* at 3. Regarding Exhibit 2082, Petitioners affirm

that the Final Decision does not cite or rely on the portions of the exhibit containing Petitioners' confidential information, i.e., paragraphs 206 and 240. *Id.* at 4. On October 17, 2016, Petitioners filed a redacted copy of Exhibit 2082 that will remain in the record if the sealed version of the exhibit is expunged. *Id.* Thus, Petitioners assert that expunging the sealed exhibits will not impede public understanding of the underlying arguments and evidence relied upon by the Board in the Final Decision. *Id.*

Based upon our consideration of those facts, and the arguments presented in Petitioners' unopposed motion, Petitioners' request to expunge the sealed confidential information is *granted*.

Accordingly, it is

ORDERED that Petitioners' Motion to Expunge is *granted*;

FURTHER ORDERED that Exhibit 2109 shall be expunged from the record; and

FURTHER ORDERED that all versions of Exhibit 2082, *except for the redacted Exhibit 2082 filed on October 17, 2016*, shall be expunged from the record.²

² There are currently multiple versions of Exhibit 2082 on file, including multiple revised versions.

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