

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 IPR2015-01097 (Patent 8,754,131 B2)¹

Case IPR2015-01100 (Patent 8,927,606 B1)²

Case IPR2015-01105 (Patent 8,871,813 B2)³

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

FRANKLIN, *Administrative Patent Judge*.

DECISION⁴

Granting-in-Part Patent Owner's Motion to Expunge
37 C.F.R. § 42.56

¹ Case IPR2016-00089 has been joined with this proceeding.

² Case IPR2016-00091 has been joined with this proceeding.

³ Case IPR2016-00090 has been joined with this proceeding.

⁴ This Decision relates to and shall be filed in each referenced case.

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IPR2015-01105 (Patent 8,871,813 B2)

On October 17, 2016, Patent Owner filed a motion to expunge the sealed versions of the following papers and exhibits:

- Patent Owner’s Response (citing to confidential exhibits), Paper Nos. 23 and 24 (filed February 25, 2016).
- Excerpts of Patent Owner’s New Drug Application: Ex. 2096 (filed July 29, 2016); Ex. 2103 (filed July 29, 2016); Ex. 2110 (filed July 29, 2016); Ex. 2251 (filed July 29, 2016); Exs. 2291-2293 (filed July 29, 2016).
- Information related to alleged commercial success of Patent Owner’s product from a related district court case: Ex. 2258 (filed February 25, 2016); Ex. 2323 (filed May 5, 2016).
- Materials related to third-party BioScience’s testing procedures: Exs. 2267-2278, 2294 (filed February 25, 2016).
- Expert Declarations: Hofmann (Ex. 1122)(filed April 22, 2016); Williams (Ex. 2082) (filed February 25, 2016); Trattler (Ex. 2116) (filed July 29, 2016); Myers (Ex. 2126) (filed July 29, 2016); Paulson (Ex. 2128) (filed February 25, 2016); and Jarosz (Ex. 2130) (filed July 29, 2016).
- Transcripts of Expert Cross Examinations: Dr. Paulson (Ex. 1123) (filed April 22, 2016); Dr. Trattler (Ex. 1120) (filed April 22, 2016); Dr. Williams (Ex. 1099) (filed April 22, 2016); and Mr. Hofmann (Ex. 1181) (excerpts from transcript) (filed May 18, 2016).

Paper 77, 3–4. Patent Owner states that it “contacted counsel for Petitioner and they do not oppose this motion to expunge.” *Id.* at 7. However, Patent Owner clarifies in a footnote that Petitioner Lupin opposes the motion with respect to Exhibit 1181. *Id.* at n.10.

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

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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 each of the above-captioned proceedings. Paper 71. Additionally, we granted Patent Owner’s Motions to Seal all or portions of the papers and exhibits that Patent Owner now seeks to expunge. *See* Papers 73 and 74. On September 12, 2016, a Final Written Decision was entered by the Board in each proceeding. Paper 70. Accordingly, documents filed subject to a protective order would normally be made public 45 days from that date.

Petitioner affirms that of the items that it seeks to expunge, only portions of the following documents were referred to in the Board’s Final Decisions:

- Patent Owner’s Response (Paper No. 23),
- Hofmann Declaration (Ex. 1122),
- Ex. 1154
- Williams Declaration (Ex. 2082), and
- Jarosz Declaration (Ex. 2130).

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Paper 76, 4. On October 17, 2016, Patent Owner filed a redacted public version of each those documents that will remain in the record if the sealed versions are expunged. *Id.* Thus, Patent Owner asserts that if the requested sealed papers and exhibits are expunged, the public will still “have access to all the materials relevant to the merits of [each] proceeding.” *Id.* at 6.

Based upon our consideration of those facts, and the arguments presented in Patent Owner’s motion, Patent Owner’s request to expunge the confidential versions of Papers 23 and 24, and Exhibits 1099, 1120, 1122, 1123, 1154, 2082, 2096, 2102, 2103, 2110, 2116, 2126, 2128, 2130, 2251, 2258, 2267–2278, 2291–2293, 2294, and 2323 is *granted*.

In consideration of Petitioner Lupin’s opposition to expunging Exhibit 1181, we *deny* Patent Owner’s motion with respect to that exhibit. However, the sealed status of Exhibit 1181 shall be preserved pending appeal. Patent Owner is authorized to renew its request to expunge Exhibit 1181 within ten business days after the time for filing a notice of appeal expires, or if an appeal is taken, the time for filing a renewed motion to expunge Exhibit 1181 is extended to ten business days after a final disposition of such appeal.

Accordingly, it is

ORDERED that Patent Owner’s Motion to Expunge with respect to confidential versions of Papers 23 and 24, and Exhibits 1099, 1120, 1122, 1123, 1154, 2082, 2096, 2102, 2103, 2110, 2116, 2126, 2128, 2130, 2251, 2258, 2267–2278, 2291–2293, 2294, and 2323 is *granted*;

FURTHER ORDERED that Patent Owner’s Motion to expunge with respect to Exhibit 1181 is *denied*;

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FURTHER ORDERED that all confidential versions of Papers 23 and 24, and Exhibits 1099, 1120, 1122, 1123, 1154, 2082, 2096, 2102, 2103, 2110, 2116, 2126, 2128, 2130, 2251, 2258, 2267–2278, 2291–2293, 2294, and 2323 shall be expunged from the record;

FURTHER ORDERED that the sealed status of Exhibit 1181 shall be preserved pending appeal; and

FURTHER ORDERED that Patent Owner is authorized to renew its request to expunge Exhibit 1181 within ten business days after the time for filing a notice of appeal expires, or if an appeal is taken, the time for filing a renewed motion to expunge Exhibit 1181 is extended to ten business days after a final disposition of such appeal.

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