

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WOCKHARDT BIO AG,
Petitioner,

v.

JANSSEN ONCOLOGY, INC.,
Patent Owner.

Case IPR2016-01582
Patent 8,822,438 B2

Before JEFFREY N. FREDMAN, KRISTINA M. KALAN and
JACQUELINE T. HARLOW, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION

Granting-In-Part Patent Owner's Motion to Expunge
37 C.F.R. §§ 42.14, 42.56

Pursuant to 37 C.F.R. § 42.56, Janssen Oncology, Inc. (“Patent Owner”) moves to expunge Papers 12, 26, and 28, as well as Exhibits 1089, 1103, 2002, 2003, 2044, 2092, 2093, 2118 and 2161. Paper 78, 1 (“Motion”). Patent Owner attests Petitioner does not oppose the Motion. *Id.* For the reasons set forth below, we *grant-in-part* Patent Owner’s Motion.

A strong public policy exists for making information filed in an *inter partes* review publicly available. 37 C.F.R. § 42.14; *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48760–61 (Aug. 14, 2012). The public’s interest in maintaining a complete and understandable file history is balanced with the party’s interest in protecting its truly sensitive, confidential information. 77 Fed. Reg. at 48760–61. Because sealed information ordinarily becomes publicly available after final judgment, a party wishing to preserve its confidentiality may file a motion to expunge the information from the record. *Id.*; 37 C.F.R. § 42.56.

Patent Owner’s Preliminary Response (Paper 12) was filed under seal, along with a corresponding public version (Paper 13). Patent Owner’s Surreply (Paper 26) was also filed under seal, along with a corresponding public version (Paper 27). On January 19, 2017, the Board issued the Institution Decision under seal (Paper 28) along with a corresponding public version (Paper 29). We previously determined, in our Final Written Decision, that good cause existed to seal Papers 12, 26, and 28, and Exhibits 1089, 1103, 2002, 2003, 2044, 2092, 2093, 2118 and 2161, because they contain confidential information. Paper 72, 47–48. We stated, “[i]n rendering this Final Written Decision, it was not necessary to identify, nor discuss in detail, any confidential information.” *Id.* at 48. At this stage in the proceeding, we determine that expunging these exhibits, namely,

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Exhibits 1089, 1103, 2002, 2003, 2044, 2092, 2093, 2118 and 2161, would not hinder the public's ability to understand the Final Written Decision or the trial at large. We therefore agree with Patent Owner that the public's interest in being able to access this information does not outweigh Patent Owner's need to protect its confidential information. We are, however, concerned that expunging Papers 12, 26, and 28 would deprive the record of the analysis and reasoning provided by Patent Owner in support of its Preliminary Response and Surreply arguments, and the analysis and reasoning provided by the Board in rendering the Institution Decision. Accordingly, notwithstanding the provisions of our Trial Practice Guide, Papers 12, 26, and 28 shall remain under seal, but they shall not be expunged from the record.

Accordingly, we grant Patent Owner's request to expunge Exhibits 1089, 1103, 2002, 2003, 2044, 2092, 2093, 2118 and 2161. Papers 12, 26, and 28 shall remain under seal.

It is:

ORDERED that Patent Owner's Motion to Expunge is *granted-in-part*, and Exhibits 1089, 1103, 2002, 2003, 2044, 2092, 2093, 2118 and 2161 are *expunged*; and

FURTHER ORDERED that Papers 12, 26, and 28 shall remain under seal.

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