

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARO PHARMACEUTICALS U.S.A., INC.,
Petitioner,

v.

APOTEX TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2017-01446
Patent 7,049,328 B2

Before LORA M. GREEN, JEFFREY N. FREDMAN, and
ZHENYU YANG, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

DECISION

Granting Patent Owner's Second Motion to Seal
37 C.F.R. § 42.54

I. INTRODUCTION

With authorization of the Board, Paper 18, Taro Pharmaceuticals U.S.A., Inc. ("Petitioner") filed redacted and public versions of a motion for additional discovery relating to Exhibits 1037–1045 and 1047–1049. Papers 22, 24 ("Mot."). Apotex Technologies, Inc. ("Patent Owner") filed redacted

and public versions of an opposition to the Motion. Papers 29, 30 (“Opp.”). In the motion, Petitioner explains that these documents were generated during litigation in parallel litigation related to the ’328 patent, *ApoPharma Inc. v. Taro Pharmaceutical Industries, Ltd.*, No. 2:16-cv-00528, currently pending in the District Court for the Eastern District of Texas – Marshall Division. Concurrently, Patent Owner moved to seal Exhibits 1037–1045 and 1047–1049. Paper 31.

We granted Petitioner’s Motion for Additional Discovery but denied the parties’ Motions to Seal without prejudice. Papers 33, 34. We authorized either party to file a renewed Motion to Seal that provided a justification sufficient to establish good cause for sealing Exhibits 1037–1045 and 1047–1049.

Patent Owner’s unopposed Second Motion to Seal was filed May 25, 2018. Paper 35. In the first Motion to Seal, the parties agreed to a Modified Default Standing Protective Order, which we already found acceptable. Paper 34, Ex. 1051. For the reasons that follow, we grant Petitioner’s Second Motion to Seal.

II. ANALYSIS

The “good cause” standard for granting a motion to seal reflects the strong public policy for making all information in an *inter partes* review open to the public. 37 C.F.R. § 42.54. “Good cause” for sealing is established by a “sufficient explanation as to why” the “information sought to be sealed is confidential information” (*Garmin Int’l v. Cuzzo Speed Techs., LLC*, Case IPR2012–00001 (PTAB Mar. 14, 2013) (Paper 34, 3), a demonstration that the information is not “excessively redacted”, and a showing that, on balance, the strong “public[] interest in maintaining a

complete and understandable record” is outweighed by “the harm to a party, by disclosure of information” and “the need of either party to rely specifically on the information at issue.” (*Corning Optical Communications RF, LLC, v. PPC Broadband, Inc.*, Case IPR2014–00440 (PTAB April 6, 14, and 17, 2015) (Paper 46, 2; 47, 2–3)

In the Second Motion to Seal, Patent Owner explains that Exhibit 1037 concerns “Apotex’s confidential business information related to NDA No. 21-825 for Ferriprox®, including information related to the research and development of Ferriprox®, and the clinical testing of Ferriprox®.” Paper 35, 2. Patent Owner also explains that Exhibit 1037 relates to “a scientific dispute between, *inter alia*, Dr. Nancy Olivieri and Apotex” that resulted in “a libel suit filed by Dr. Olivieri against Apotex for defamation” which was “resolved pursuant to a settlement agreement, the terms of which are confidential.” Paper 35, 2–3. Patent Owner similarly explains that Exhibits 1038–1041 “are confidential internal email communications between Apotex employees that relate to the scientific dispute between Apotex and Dr. Nancy Olivieri” and that Patent Owner “has significant concerns that public disclosure of Exhibits 1038-1041 may be in violation of the terms of the confidential settlement agreement.” Paper 35, 3–4. Patent Owner explains that Exhibits 1042, 1043, and 1047–1049 also relate to a “confidential NDA No. 21-825 that was filed with FDA.” Paper 35, 4–5.

Patent Owner explains that because the “documents containing sensitive information related to the dispute between Dr. Olivieri and Apotex—which was the subject of litigation(s) (including a libel lawsuit),” disclosure of those documents “could cause substantial harm.” Paper 35, 5–6.

Considering the stated confidentiality of these exhibits, along with our independent review, the Board conditionally grants the Second Motion to Seal (Paper 35) for the duration of this proceeding. We caution the parties that if the Board's final written decision substantively relies on any information in a sealed exhibit, that exhibit may be unsealed by an Order of the Board.

We encourage the parties, if possible, to jointly create and submit summary documents of Exhibits 1037–1045 and 1047–1049 that contain the information necessary for the parties to make their arguments, so that the Board could refer to the summaries in its final written decision if necessary, rather than potentially making an entire document available to the public.

III. CONCLUSION

For the reasons discussed above, the Second Motion to Seal is granted.

IV. ORDER

Accordingly, it is:

ORDERED that with respect to Exhibits 1037–1045 and 1047–1049, the Second Motion to Seal (Paper 35) is *granted*.

FURTHER ORDERED that the entered protective order (Exhibit 1051) governs the treatment and filing of confidential information in this proceeding.

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