

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner,

v.

SANOFI-AVENTIS DEUTSCHLAND GMBH,
Patent Owner.

Case IPR2017-01526 (Patent 7,476,652 B2)
Case IPR2017-01528¹ (Patent 7,713,930 B2)

Before ERICA A. FRANKLIN, ROBERT A. POLLOCK, and
MICHELLE N. ANKENBRAND, *Administrative Patent Judges*.
ANKENBRAND, *Administrative Patent Judge*.

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

¹ This Order pertains to both noted proceedings. We exercise our discretion to issue a single Order for entry in each proceeding. The parties are not authorized to use this style heading for subsequent papers without prior Board approval.

INTRODUCTION

On December 12, 2018, we entered a Final Written Decision (Paper 89,² “Final Decision” or “Final Dec.”) in each of the above-referenced proceedings. In each Final Decision, we denied Petitioner’s motion to seal portions of its sur-sur-reply that reference Exhibits 2065–2069 without prejudice to Patent Owner. Final Dec. 47. Although Petitioner represented that Patent Owner had designated the information Petitioner requested to seal confidential, we determined that Petitioner failed to provide good cause for sealing the information. *Id.* However, we authorized Patent Owner to file a motion to seal that information in Petitioner’s sur-sur-reply. *Id.*

On December 20, 2017, Patent Owner filed a Motion to Seal (Paper 93, “Motion”). In the Motion, Patent Owner requests to seal the portions of Petitioner’s sur-sur-reply that Petitioner requested to seal in the motion we denied and requests that we approve the redactions in the publicly-filed version of Petitioner’s sur-sur-reply (Paper 88) that the parties’ jointly prepared. *Id.* at 1. Patent Owner also requests that we approve the sealed and public versions of its updated exhibit list (Papers 91, 92). *Id.*

We grant the motion for the reasons set forth below.

DISCUSSION

“There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in an issued patent and therefore affects the rights of the public.” *Garmin Int’l v. Cuozzo Speed Techs.*,

² Unless otherwise noted, citations are to the papers and exhibits filed in IPR2017-01526.

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LLC, IPR2012–00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). For this reason, except as otherwise ordered, the record of an *inter partes* review trial shall be made available to the public. *See* 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. That standard includes a showing that “(1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4) on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.” *Argentum Pharms. LLC v. Alcon Research, Ltd.*, Case IPR2017-01053, slip op. at 4 (Paper 27) (PTAB Jan. 19, 2018) (informative).

Patent Owner asserts that Petitioner’s sur-sur-reply and Patent Owner’s updated exhibits list contain confidential information and that Patent Owner would suffer concrete harm if the information was publicly disclosed. Mot. 3. In particular, Patent Owner represents that Petitioner’s sur-sur-reply “summarizes and quotes confidential submissions made by Hoechst Marion Roussel to, and records of correspondence with, the FDA regarding the approval of its insulin glargine product.” *Id.* Patent Owner further states that the sur-sur-reply “summarizes confidential and proprietary research and development, testing procedures, analyses and results regarding [Patent Owner’s] Lantus [product]” and that the updated exhibit list “refers to and describes now sealed EX2065–EX2069.” *Id.* (noting further that the sur-sur-reply and updated exhibit list refer to research, development, testing, clinical, manufacturing, packaging, and pharmacological information). Petitioner did not oppose the Motion.

After having considered the Motion and Patent Owner’s representations therein, we determine Patent Owner establishes good cause for sealing the

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requested information. Patent Owner demonstrates that the information it seeks to seal consists of confidential and proprietary research and development information, confidential packaging specifications, confidential regulatory submissions, and confidential commercial information. And we see little harm to the public's interest in restricting access to the information because we did not rely on any confidential information in the Final Decision. Also, the public versions of Petitioner's sur-sur-reply and Patent Owner's updated exhibit list appear to redact only the information that Patent Owner seeks to seal in in each Motion.

We further note that the record of each proceeding shall be preserved in its entirety and that no sealed document will be expunged or made public, pending the outcome of any appeal taken from the Final Decision. The sealed documents may be made public at the conclusion of any appeal. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012). At that time, either party may file a motion to expunge the sealed documents from the record pursuant to 37 C.F.R. § 42.56.

ORDER

It is

ORDERED that Patent Owner's Motion to Seal in each proceeding (IPR2017-01526 Paper 93; IPR2017-01528 Paper 91) is *granted*.

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