

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SANOFI-AVENTIS U.S. LLC, GENZYME CORP., and REGENERON
PHARMACEUTICALS, INC.,
Petitioner,

v.

IMMUNEX CORPORATION,
Patent Owner.

Case IPR2017-01879
Patent 8,679,487 B2

Before JAMES T. MOORE, GRACE KARAFFA OBERMANN, and
TINA E. HULSE, *Administrative Patent Judges*.

HULSE, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Motion to Preserve the Record Pending Appeal
37 C.F.R. §§ 42.5, 42.56

On February 14, 2019, the panel issued a Final Written Decision, holding that Petitioner had not shown, by a preponderance of the evidence, the unpatentability of the challenged claims in this proceeding. Paper 88. On April 1, 2019, Patent Owner filed a Motion to Preserve the Record Pending Appeal. Paper 89. Patent Owner represents that Petitioner does not oppose the Motion. *Id.* at 1. Patent Owner's Motion is *granted*.

We previously granted Patent Owner's motions to file Exhibits 2012–2016, portions of Exhibits 1232–1237 and 1239, and portions of Petitioners' Reply to Patent Owner's Response (Paper 49) under seal pursuant to the Modified Protective Order. Paper 22; Paper 87. Those documents ordinarily would become public 45 days after the Final Written Decision is entered, which would be March 31, 2019. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012). If a party wishes to preserve the confidentiality of documents filed under seal, the party may file a motion to expunge them from the record. 37 C.F.R. § 42.56. Patent Owner states that the deadline for filing a Notice of Appeal in this case is April 18, 2019, which is after the deadline to unseal or expunge the sealed documents. Paper 89, 3. Petitioner has not yet filed a Notice of Appeal in this proceeding.

Patent Owner argues that “[i]f the record is not preserved in its entirety including any sealed portions and an appeal is taken, the Federal Circuit may not be able to fully consider the issues discussed in the Final Written Decision, which would cause prejudice to both Parties.” *Id.* at 5. We find Patent Owner's argument persuasive. We therefore authorize the parties, if they choose to do so, to file their respective motion to expunge sealed documents within 45 days of the expiration of the time for filing a

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Notice of Appeal, or, if an appeal is filed, within 45 days of the conclusion of any such appeal.

Accordingly, it is

ORDERED that Patent Owner's Motion to Preserve the Record Pending Appeal is *granted*;

FURTHER ORDERED that the record in this proceeding will be preserved, including all confidential pleadings and exhibits as sealed documents, until 45 days after (a) the time for filing a Notice of Appeal expires, or (b) a final disposition of any appeal taken;

FURTHER ORDERED that the parties are authorized to file a motion to expunge the documents filed under seal in this proceeding within 45 days of the expiration of the time for filing a Notice of Appeal, or, if an appeal is filed, within 45 days of the conclusion of any such appeal; and

FURTHER ORDERED that if no motion to expunge is filed within the time frame set forth in this Order, the documents filed under seal will be unsealed.

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