

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PFIZER INC.,¹
Petitioner,

v.

NOVO NORDISK A/S,
Patent Owner.

IPR2020-00324²
Patent 8,114,833 B2

Before ERICA A. FRANKLIN, JOHN G. NEW, and
SUSAN L. C. MITCHELL, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

DECISION

Granting-in-Part Petitioner's Motion to Seal
Paper 35 and Exhibits 1077–1079, and 1106
37 C.F.R. §§ 42.14 and 42.54

¹ The proceeding has been terminated as to the original petitioner, Mylan Institutional LLC. Paper 67.

² IPR2020-01252 has been joined with this proceeding. *See* Paper 33.

I. INTRODUCTION

Petitioner moves to seal its Petitioner’s Reply (Paper 35) and Exhibits 1077–1079, and 1106. Paper 34 (“Mot.”).³ Exhibit 1077 is the Transcript for the Deposition of Peter Tessier, Ph.D. Exhibit 1078 is the Transcript for the Deposition of Dorthe Kot Engelund. Exhibit 1079 is the Transcript for the Deposition of Tina B. Pedersen, Ph.D. Exhibit 1106 is the Reply Declaration of Laird Forrest, Ph.D. The motion to seal is unopposed. For the reasons explained below, we grant Petitioner’s motion to seal the confidential versions of the Petitioner’s Reply (Paper 35), the Transcript for the Deposition of Peter Tessier, Ph.D. (Ex. 1077), and the Reply Declaration of Laird Forrest, Ph.D. (Ex. 1106). However, as explained below, we deny without prejudice Petitioner’s motion to seal the Transcript for the Deposition of Dorthe Kot Engelund (Exhibit 1078) and the Transcript for the Deposition of Tina B. Pedersen, Ph.D. (Exhibit 1079).

II. 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., LLC*, IPR2012-00001, Paper 34, 1–2 (PTAB Mar. 14, 2013). A motion to seal may be granted for good cause. 37 C.F.R. § 42.54. The moving party bears the burden of showing that there is good cause for the

³ As noted in footnote 1, this case has been terminated as to the original petitioner, Mylan Institutional LLC. Although the instant request and motion were filed by that original petitioner, we now attribute it to the previously joined and remaining petitioner, Pfizer, Inc.

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relief requested, including why the information is appropriate to be filed under seal. 37 C.F.R. §§ 42.20, 42.54; *see also Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative) (discussing factors the Board may consider when deciding whether to grant a motion to seal documents asserted to contain confidential information). The Patent Trial and Appeal Board Consolidated Trial Practice Guide (“CTPG”) notes that 37 C.F.R. § 42.54 identifies confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. CTPG at 19.⁴

In the motion, Petitioner asserts that “good cause exists for placing the Exhibits and corresponding portions of the Reply under seal because Patent Owner has contended this information should be sealed according to the reasons set forth in Paper No. 22 [Patent Owner’s Motion to Seal and for Entry of A Protective Order].” Mot. 2. Petitioner explains that it “takes no position as to whether the underlying information satisfies the Board’s requirements for filing under seal, as it is Patent Owner that has asserted the confidentiality of these exhibits.” *Id.*

In the motion, Petitioner also states, “Petitioner will file redacted versions of these Exhibits and the Reply shortly hereafter after conferring with Patent Owner.” *Id.* at 3. However, we are only able to locate redacted, public versions of Petitioner’s Reply (Paper 40), Exhibits 1077 and 1106,

⁴ November 2019 Edition, *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

filed in this proceeding. We do not see that Petitioner has filed redacted versions of Exhibits 1078 or 1079. Nor has Petitioner asserted that those exhibits should be sealed in their entirety and demonstrated that either party has shown good cause for doing so. Indeed, based on our review of those exhibits, it does not appear that the testimony is limited to confidential information. In any event, the issue of whether Exhibits 1078 or 1079 contain solely confidential information has not been properly addressed in the motion.

We therefore determine that Petitioner has shown good cause to seal the confidential version of the Petitioner's Reply (Paper 35), the confidential version of the Transcript of the Deposition of Peter M. Tessier, Ph.D. (Exhibit 1077), and the confidential version of the Reply Declaration of Laird Forrest, Ph.D. (Ex. 1106). However, we do not find good cause to seal the Transcripts for the Depositions of Dorthe Kot Engelund (Exhibit 1078) and Tina B. Pedersen, Ph.D. (Exhibit 1079), in their entirety. For that matter, we exercise our discretion to maintain Exhibits 1078 and 1079 under a provisional seal to permit Petitioner an opportunity to file a renewed motion to seal those exhibits, along with redacted, public versions of the exhibits, as may be appropriate.

III. ORDER

Accordingly, it is

ORDERED that Petitioner's Motion to Seal is granted-in-part, wherein we grant the motion to seal with respect to the confidential versions of the Petitioner's Reply (Paper 35), the Transcript of the Deposition of Peter M. Tessier, Ph.D. (Exhibit 1077), and the Reply Declaration of Laird

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Forrest, Ph.D. (Ex. 1106), and deny the motion to seal without prejudice with respect to Exhibits 1078 and 1079 in their entirety; and

FURTHER ORDERED that Exhibits 1078 and 1079 shall be maintained under a provisional seal to permit Petitioner an opportunity to file a renewed motion to seal those exhibits, along with redacted, public versions of the exhibits, as may be appropriate.

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