

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIQUIDIA TECHNOLOGIES, Inc.,
Petitioner,

v.

UNITED THERAPEUTICS CORPORATION,
Patent Owner.

IPR2021-00406
U.S. Patent No. 10,716,793

PATENT OWNER'S 2ND MOTION TO FILE UNDER SEAL
37 C.F.R. § 42.54

Pursuant to 37 C.F.R. § 42.54, United Therapeutics Corporation (“Patent Owner”) hereby submits this 2ND Motion to Seal a portion of Exhibit 2052 (the block quote in par. 104), which contains an excerpt from a confidential Exhibit (EX2062 at p. 20) that is the subject of Patent Owner’s first Motion to Seal (Paper No. 27).

I. Good Cause Exists for Sealing Certain Confidential Information

The Office Patent Trial Practice Guide provides that “the rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). These rules “identify 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.” *Id.* (citing 37 C.F.R. § 42.54).

As explained in the first Motion to Seal (Paper No. 27), good cause exists to support the sealing of the Exhibits 2062-2064, which were produced in a litigation (*United Therapeutics Corp. v. Sandoz, Inc.*, Civ. No. 14-cv-05499) as confidential documents and remain under seal. These exhibits were also filed under a motion to seal in IPR2017-01621 & 01622 (Paper Nos. 41 and 42, respectively), and the Board granted the motion to seal in those proceedings

(Paper Nos. 49 and 50, respectively) where they were previously labeled Exhibits 2049-2051. Exhibits 2062-2064 describe information on protocols, procedures, and data submitted to and held in confidence by the FDA in relation to the approval of Tyvaso[®]. Such information could be improperly used by competitors to gain unfair business and competitive advantage with customers in the marketplace, including using details of Patent Owner's process for competitive commercial products.

The Board has granted a Motion to Seal certain exhibits in their entireties for similar reasons in *Purdue Pharma L.P. v. Depomed, Inc.*, IPR2014-00377, paper no. 62 at 4-6, (PTAB March 17, 2015), where "Patent Owner avers that the 'highly confidential nature of' the information contained in those documents makes it 'impossible to reasonably redact [them] for public disclosure.'" *Id.* at 4. As noted, the Board previously granted a motion to seal these same exhibits in their entireties in IPR2017-01621 & 01622.

EX2052 in par. 104 cites a portion of EX2062 from p. 20, so that portion of EX2052 should be sealed. Patent Owner has concurrently filed a redacted, public version of EX2052 where only that portion of par. 104 from EX2062 is redacted.

II. Certification of Non-Publication

On behalf of Patent Owner, undersigned counsel certifies that, to the best

of their knowledge, the information sought to be sealed by this Motion to Seal has not been published or otherwise made public. Efforts to maintain the confidentiality of this information have been undertaken by Patent Owner in the related proceedings noted above.

III. Certification of Conference with Opposing Party Pursuant to 37 C.F.R. § 42.54

Patent Owner has conferred with Petitioner about both the PTAB's Default Protective Order and motion to seal relating to Patent Owner's confidential information, and the Parties have agreed to be bound by the PTAB's Default Protective Order. Per Appendix B of the Trial Practice Guide, the Default Protective Order is not being separately filed.

IV. Protective Order

The confidential information will be subject to the Default Protective Order from the Trial Practice Guide, to which the parties have agreed to be bound in this proceeding.

V. Conclusion

For the reasons stated above, Patent Owner respectfully requests that the portion of par. 104 in EX2052 discussed above remain under seal.

Date: Nov. 10, 2021

Respectfully submitted,

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