

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

REGENERON PHARMACEUTICALS, INC.,
Petitioner,

v.

NOVARTIS PHARMA AG, NOVARTIS TECHNOLOGY LLC,
NOVARTIS PHARMACEUTICALS CORPORATION,
Patent Owner.

IPR2021-00816
Patent 9,220,631 B2

Before ERICA A. FRANKLIN, ROBERT L. KINDER, and
KRISTIL R. SAWERT, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

ORDER
Denying Patent Owner's Motion to Seal
37 C.F.R. §§ 42.14 and 42.54

Introduction

Patent Owner filed a Motion to Seal Exhibits 2002, 2063, 2064, and 2066–2088. Paper 10, 2 (“Mot.”). Petitioner has not filed any opposition to the Motion, and the period for doing so has expired. *See* 37 C.F.R. § 42.25(a)(1). Patent Owner also filed an unopposed Motion to enter a Modified Default Protective Order (Ex. 2091). Paper 9. For the reasons set forth below, Patent Owner’s Motions are *denied without prejudice* subject to the conditions explained in this Order.

Motion to Seal

“There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, IPR2012–00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). The record for an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 326(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; *see also Argentum Pharms. LLC v. Alcon Res., Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (Informative) (describing the “good cause” standard). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. *See Argentum*, Paper 27 at 3–4 (“[A] movant to seal must demonstrate adequately 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.”).

Patent Owner seeks to seal Exhibits 2002, 2063,¹ 2064, and 2066–2088, which Patent Owner avers contain “non-public and proprietary” information related to “confidential research and development” of the subject matter of the patent at issue. Mot. 3. Patent Owner states that “the information sought to be sealed by this motion has not been published or otherwise made public.” *Id.* In addition, Patent Owner states that the exhibits contain confidential information of a third party. *Id.*; *id.* at 4.

Patent Owner states that “[t]he proprietary information contained in Exhibits 2002, 2063–2064, and 2066–2088 is not essential to an understanding of the accompanying Patent Owners’ Preliminary Response and does not impede the public’s understanding of the file history.” *Id.* at 4. Patent Owner further asserts “[t]he public’s interest in accessing this information for the purposes of the patentability of the challenged claims in this proceeding is outweighed by Patent Owners’ interest in maintaining its proprietary research and development information as confidential.” *Id.*

¹ Patent Owner named almost all of its approximately 100 exhibits by the exhibit number without giving each a descriptive (non-argumentative) name. Although our rules do not address naming exhibits, having a unique name for each exhibit aids in our (and the public’s) review of the evidence submitted and allows more efficient use of the Board’s time.

Exhibit 2002

Exhibit 2002 is a declaration of named inventor Marie Picci. *Id.* at 3. Patent Owner filed a corresponding redacted public version of Exhibit 2002. *Id.* The Motion avers that the redacted information pertains to confidential research and development as well as the confidential information of a third party. *Id.*

However, the Motion does not explain what information is Patent Owner's versus what information is third party information, and the Motion further fails to explain why the third party information is confidential such that it should not be subject to public disclosure. In addition, the Motion is silent as to why public disclosure of the information is harmful to Patent Owner/third party or why the information sought to be sealed is needed at trial.

As such, the Motion fails to demonstrate that the third party information sought to be sealed is truly confidential, that a concrete harm would result upon public disclosure, and that there exists a genuine need to rely in the trial on the specific information sought to be sealed. Accordingly, Patent Owner has not established that its interest in maintaining confidentiality of information in Exhibit 2002 outweighs the strong public interest in having an open record.

Exhibits 2063 and 2064

Exhibits 2063 and 2064 are Patent Owner's internal PowerPoint Presentation and technical report, respectively, authored by a named inventor. *Id.* The Motion avers that the exhibits contain information pertaining to confidential research development and the confidential information of third parties.

We point out that the exhibits sought to be sealed include redacted portions with no explanation as to the reason(s) for the redactions. *See* Exs. 2063, 2064. In addition, Patent Owner did not file corresponding redacted public versions of these exhibits, and the Motion is silent on that point, providing no reason why the exhibits should be sealed in their entirety. The Motion also fails to identify which portions are Patent Owner's information and which are third party information. As such, the public's interest in maintaining an open record, that is both complete and understandable, is negatively impacted.

The Motion is also silent as to how these Exhibits relate to any disputed issue of fact or why they are necessary to a specific position taken by a party in this proceeding.

Furthermore, the Motion fails to describe any harm that will result in the event of public disclosure. Rather than averring that public disclosure of Exhibits 2063 and 2064 will result in concrete injury, the Motion merely states Patent Owner has an "interest in maintaining its proprietary research and development information as confidential." *Id.* at 4. The Motion is silent as to any harm that would result due to public disclosure of its proprietary research and development information or third party information.

With respect to Exhibits 2063 and 2064, Patent Owner did not 1) provide appropriately redacted public versions of the exhibits, 2) identify sufficiently a reason why the information sought to be sealed is necessary in this trial, and 3) identify any concrete harm that would result as a result of public disclosure. As a result, the Motion fails to balance the public's interest in maintaining a complete and understandable record against the

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