

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SLAYBACK PHARMA LLC,
Petitioner,

v.

EYE THERAPIES, LLC,
Patent Owner.

Case No.: IPR2022-00142

U.S. Patent No.: 8,293,742

PETITIONER'S MOTION TO SEAL

Pursuant to 37 C.F.R. §§ 42.16 and 42.54, Petitioner, Slayback Pharma LLC, respectfully requests that the Board seal the confidential versions of Petitioner’s Exhibit Nos. 1047 and 1051 and Petitioner’s Reply, filed herewith. The portions of the Exhibits that Petitioner seeks to seal contain information that Patent Owner has identified as confidential pursuant to the proposed protective order in this proceeding.

Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are available to the public, but parties may file a motion to seal confidential information. *See also* 37 C.F.R. § 42.14 (2021). “The standard for granting a motion to seal is ‘for good cause.’” *Garmin v. Cuozzo*, IPR2012-00001, Paper No. 34 (P.T.A.B. Mar. 14, 2013). The Office Patent Trial Practice Guide states that the 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.” 77 Fed. Reg. 48756, 48760 (2012).

On August 29, 2022, Patent Owner filed a Motion to Seal and Enter Stipulated Proposed Protective Order. Paper No. 29. With that motion, Patent Owner identified and served various documents containing information that it identified as being non-public excerpts of Bausch & Lomb’s NDA and Bausch & Lomb’s sensitive business and financial information. *Id.*, pp.3-4. Petitioners did

not oppose that motion. In this motion, Petitioner seeks to seal documents that contain information that Patent Owners have identified as confidential pursuant to the proposed protective order.

I. Identification of Confidential Information

Petitioner seeks to seal Exhibit No. 1051 in its entirety and portions of Petitioner's Reply and Exhibit No. 1047.

Exhibit No. 1051 is the transcript of the deposition of John Ferris, which Patent Owner designated confidential under the proposed protective order.

Exhibit No. 1047 is the Expert Declaration of Ivan T. Hofmann, which addresses information that Patent Owner has identified as confidential, including information that was filed under seal with the Patent Owner Response. A redacted version of Exhibit No. 1047 is being publicly filed concurrently with this motion.

Petitioner's Reply similarly addresses information that Patent Owner has identified as confidential, including information that was filed under seal with the Patent Owner Response. A redacted version of Petitioner's Reply is being publicly filed concurrently with this motion.

II. Good Cause Exists for Sealing the Confidential Information

Petitioner's Reply and Exhibit Nos. 1047 and 1051 contain information that Patent Owner has identified as being confidential and sensitive competitive market analysis, business strategy, and financial information of Bausch & Lomb relating

to Lumify[®]. According to Patent Owner, good cause exists to seal this confidential information because it contains details about Bausch & Lomb's sensitive business information, which is essential to the running of the business. Paper No. 29, pp.5-6. Based on Patent Owner's representations, this information would be valuable to Bausch & Lomb's competitors and harmful to the company if made public. *Id.* Therefore, Petitioner requests that the Board seal the unredacted versions of Petitioner's Reply and Exhibit Nos. 1047 and 1051.

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

The parties have conferred and Patent Owner does not oppose this motion.

IV. Conclusion

For the reasons set forth above, Petitioner respectfully requests that the Board grant this motion to seal.

Dated: December 16, 2022

Respectfully submitted,

By: /Linnea P. Cipriano/

Linnea P. Cipriano
(Reg. No. 67,729)
Goodwin Procter LLP
620 Eighth Avenue
New York, NY 10018
Phone: (212) 813-8800

Cell: (443) 235-1739
Fax: (212) 937-2204
lqipriano@goodwinlaw.com

*Counsel for Petitioner Slayback
Pharma LLC*

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