

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JENNEWEIN BIOTECHNOLOGIE GmbH,
Petitioner,

v.

GLYCOSYN LLC,
Patent Owner.

Case PGR2019-00023
U.S. Patent No. 9,970,018

**PATENT OWNER'S MOTION TO SEAL AND TO ENTER STIPULATED
PROTECTIVE ORDER PURSUANT TO 37 C.F.R. § 42.54**

I. STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Glycosyn LLC (“Glycosyn” or “Patent Owner”) respectfully submits this motion to seal portions of its Patent Owner Preliminary Response (“Preliminary Response”) and the entirety of Exhibit 2002 (Excerpts of the December 14, 2018 Deposition Transcript of Dr. Gregory Stephanopoulos) (“Stephanopoulos Transcript”) which is being filed concurrently with this Motion. Sealing the material set forth below is required to maintain confidentiality designations made by Petitioner Jennewein Biotechnologie GmbH (“Jennewein” or “Petitioner”) during the related ITC proceeding, *Certain Human Milk Oligosaccharides and Methods of Producing the Same*, Inv. No. 337-TA-1120 (U.S.I.T.C.) (the “ITC Investigation”).

Glycosyn further requests entry of the Stipulated Protective Order attached as Appendix 1, which is based on the Board’s Default Protective Order with minor edits added to conform the Default Protective Order with the protective order in place at the ITC. The Stipulated Protective Order with these changes highlighted in blue is attached as Appendix 2.

The parties have not met and conferred on this Motion. On Friday, April 5, 2019, counsel for Glycosyn contacted Petitioner’s counsel by email and identified the portions of the Stephanopoulos Transcript that Glycosyn planned to submit with its Preliminary Response. Glycosyn’s counsel requested that Jennewein de-

designate the portions of the deposition transcript included in Exhibit 2002 or identify any Jennewein confidential information that required protection. On Tuesday, April 9, 2019, counsel for Jennewein replied to state that he was busy with a trial but that a response would be coming “as soon as possible.” As of the time of this filing, Glycosyn has not received a response regarding the confidentiality of Exhibit 2002 but Patent Owner has agreed to the entry of the Stipulated Protective Order.

II. LEGAL STANDARD FOR SEALING THE IDENTIFIED INFORMATION

Documents filed in an IPR are generally available to the public. 37 C.F.R. § 42.14. However, the Board may, for good cause, protect confidential information from public disclosure. 37 C.F.R. § 42.14; *see also Garmin Int’l v. Cuozzo Speed Tech., LLC*, IPR2012-00001, Paper 36 at 3-4 (PTAB Apr. 5, 2013). Where possible, parties should redact sensitive information from their filings, rather than seek to seal entire documents. Office Trial Practice Guide, 77 Fed. Reg. 48756, 48761 (2012).

When determining good cause, the Board must balance the public’s interest in a complete and understandable file history with the party’s interest in protecting sensitive information. *See Garmin*, IPR2012-00001, Paper 36, 3-4 (citing Office Trial Practice Guide, 77 Fed. Reg. at 48760). However, the public’s interest in having access to a party’s confidential business that is only indirectly related to

patent validity is “minimal.” *Id.* at 8-9 (granting the patent owner’s motion to seal an agreement relating to the “commercializ[ation]” of the patent-at- issue).

Glycosyn is submitting excerpts of the Stephanopoulos Transcript (Exhibit 2002) with its Preliminary Response. Glycosyn’s Preliminary Response also references and includes content from this same deposition transcript. The Stephanopoulos Deposition excerpts to be sealed were designated as confidential by the Petitioner during the ITC Investigation pursuant to a protective order, and Glycosyn’s request is based on the need to respect that designation and maintain the non-disclosure of information, at least until such time as Petitioner responds to Glycosyn’s request for de-designation.¹ The Preliminary Response also includes and quotes information from that same exhibit (Exhibit 2002). *See e.g.*, Paper No. 5 at pp. 10-11.

In addition, pursuant to paragraph 5(A)(ii) of the Stipulated Protective Order, Patent Owner has filed a redacted version of the Preliminary Response (*see* Paper

¹ It is Glycosyn’s position that there is no basis to designate any of the cited portions of the Stephanopoulos Transcript as confidential under any protective order, but Glycosyn is filing this motion out of respect for the ITC protective order and in light of the fact that Glycosyn has not yet received a response from counsel for Patent Owner to Glycosyn’s April 5 request for de-designation.

No. 6) in an attempt to minimize the impact on the public's interest in maintaining a complete and understandable record.

III. CERTIFICATION OF CONFERENCE PURSUANT TO 37 C.F.R. § 42.54

Glycosyn has attempted to confer in good faith with Petitioner regarding the confidentiality designation attached to Exhibit 2002 to determine if this motion to seal was necessary. As of the date of this filing, Glycosyn has not received a substantive response from Petitioner regarding that exhibit. However, the parties have reached an agreement on the Stipulated Protective Order and Glycosyn respectfully requests that the Board enter that order in this proceeding.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.