

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 Patent Owner's Unopposed Renewed
Motion to Seal Exhibits 2023, 1078, and 1079
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

Patent Owner renews its motion to seal Exhibit 2023, the Declaration of Dorthe Kot Englund. Patent Owner also moves to seal Exhibit 1078, the Transcript for the Deposition of Dorthe Kot Englund, and Exhibit 1079, the Transcript for the Deposition of Tina B. Pedersen, Ph.D. Petitioner does not oppose the motion.

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 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 19.³

Regarding Exhibit 2023, Patent Owner asserts that it has corrected the deficiencies that we noted in our decision denying the original motion to seal the exhibit. Mot. 1. In particular, we explained that Patent Owner has not shown that the exhibit should be sealed in its entirety because it appears to contain at least some information that is not confidential. Paper 72, 4.

With its current motion, Patent Owner appropriately seeks to seal on the confidential material in the exhibit. Mot. 3. Accordingly, Patent Owner has filed a redacted, non-confidential version of Exhibit 2023 as Exhibit 2099. Patent Owner asserts that good cause exists for maintaining the confidential portions of the exhibits under seal because they contain confidential, non-public research and development information in the form of proprietary clinical and scientific data. *Id.*

Regarding Exhibits 1078 and 1079, Patent Owner asserts that it has corrected the deficiencies that we noted in our decision denying the original motion to seal filed by Petitioner. Mot. 1. In the original motion by Petitioner, Petitioner asserted that “good cause exists for placing the Exhibits . . . 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].” Paper 34, 2. Petitioner explained that it “takes no position as to whether the underlying information satisfies the Board’s requirements for filing under seal, as it is

³ November 2019 Edition, *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

Patent Owner that has asserted the confidentiality of these exhibits.” *Id.* Petitioner also stated that it would file redacted versions of the exhibits. *Id.* at 3. In our decision denying the motion to seal Exhibits 1078 and 1079, we noted that redacted versions of Exhibits 1078 and 1079 had not been filed and good cause was not shown to seal the exhibits in their entirety. Paper 74, 4.

In its current motion, Patent Owner explains that it has now filed redacted, non-confidential versions of Exhibit 1078 and 1079, as Exhibits 2100 and 2101, respectively. Mot. 3. Patent Owner asserts that good cause exists for maintaining the confidential portions of the exhibits under seal because they contain confidential, non-public research and development information in the form of proprietary clinical and scientific data. *Id.*

We therefore determine that Petitioner has shown good cause to seal the confidential versions of the Declaration of Dorthe Kot Engelund (Exhibit 2023) and the Transcripts for the Depositions of Dorthe Kot Engelund (Exhibit 1078) and Tina B. Pedersen, Ph.D. (Exhibit 1079).

Further, as discussed in our Consolidated Trial Practice Guide, Confidential information that is subject to a protective order ordinarily would become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial. There is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial. A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.

CTPG at 21–22; *see also* 37 C.F.R. § 42.56 (“After denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to

expunge confidential information from the record.”).

Today, we have entered an Order terminating this proceeding. Paper 80. Accordingly, papers and exhibits filed subject to the protective order would ordinarily be made public 45 days from this date. As set forth in the CTPG, the parties are authorized to file a motion to expunge those sealed materials.

III. ORDER

Accordingly, it is

ORDERED that Patent Owner’s Unopposed Renewed Motion to Seal is *granted*.

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