

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PURDUE PHARMA L.P.,  
Petitioner,

v.

DEPOMED, INC.,  
Patent Owner.

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Case IPR2014-00377 (Patent 6,635,280 B2)  
Case IPR2014-00378 (Patent 6,340,475 B2)  
Case IPR2014-00379 (Patent 6,340,475 B2)<sup>1</sup>

Before ERICA A. FRANKLIN, GRACE KARAFFA OBERMANN, and  
TINA E. HULSE, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

DECISION

*Denying Without Prejudice Patent Owner's Motion to Seal  
and Joint Motion for Entry of Stipulated Protective Order  
37 C.F.R. § 42.54*

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<sup>1</sup> This order addresses issues common to all cases; therefore, we issue a single order to be entered in each case. The parties are authorized to use this style heading when filing the same paper in multiple proceedings, provided that such heading includes a footnote attesting that “the word-for-word identical paper is filed in each proceeding identified in the heading.”

IPR2014-00377 (Patent 6,635,280 B2)  
IPR2014-00378 (Patent 6,340,475 B2)  
IPR2014-00379 (Patent 6,340,475 B2)

On October 8, 2014, in each of these proceedings, the parties filed a Joint Motion for Entry of Stipulated Protective Order (“Joint Motion”), attaching a copy of the proposed Stipulated Protective Order as Exhibit A, as well as a document comparing the proposed Stipulated Protective Order to the Board’s Default Protective Order as Exhibit B. Paper 23, Paper 24, Paper 22.<sup>2</sup> On October 14, 2014, Patent Owner filed an identical, unopposed Motion to Seal in each proceeding. Paper 26, Paper 27, Paper 25.

The parties have agreed to modify the Default Protective Order to add a number of heightened categories of confidential information, but they do not clearly define them. Joint Motion, Exhibit A (Section 1, 2). For example, the parties do not identify any differences between the designations “CONFIDENTIAL-OUTSIDE COUNSEL ONLY,” “HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY,” and simply “OUTSIDE COUNSEL ONLY.” *Id.* at Exhibit A (Section 1). Further designations include “CONFIDENTIAL,” “Confidential,” and “Private & Confidential,” without any explanation of the differences, if any, between those designations. *Id.* at Exhibit A (Section 1). Critically lacking is any

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<sup>2</sup> Paper numbers refer to IPR2014-00377, IPR2014-00378, and IPR2014-00379 in sequence.

IPR2014-00377 (Patent 6,635,280 B2)

IPR2014-00378 (Patent 6,340,475 B2)

IPR2014-00379 (Patent 6,340,475 B2)

distinction in terms of who may access any particular category of designated confidential information from among the groups of individuals identified in the proposed Stipulated Protective Order. *Id.* at Exhibit A (Section 2).

The Board's standards for granting motions to seal are discussed in *Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001 (Paper 34, Mar. 14, 2013). There is a strong public policy for making all information filed in *inter partes* review proceedings open to the public. *Id.* The standard for granting a motion to seal is "good cause." 37 C.F.R. § 42.54. The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). This includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. In addition, a motion to seal is required to include a certification that the moving party has in good faith conferred, or attempted to confer, with the opposing party in an effort to come to an agreement on the scope of the protection sought.

*Garmin, supra* at 3.

Patent Owner seeks permission to seal Exhibits 2028–2036, 2048, 2054, 2058, 2074, 2079, 2083, 2105, 2132, 2137–2138, 2142, 2145–2146, and 2148–2149. Patent Owner has not established, in relation to the

IPR2014-00377 (Patent 6,635,280 B2)

IPR2014-00378 (Patent 6,340,475 B2)

IPR2014-00379 (Patent 6,340,475 B2)

confidential content of those exhibits, a need for the multiple categories of confidential information identified in the proposed Stipulated Protective Order. *See* Joint Motion, Exhibit A (Section 1). Nor has Patent Owner identified with sufficient clarity the persons who may access any particular category of confidential information under the terms of the Stipulated Protective Order. *Id.* at Section 2. Patent Owner fails also to show “good cause” for imposing any patent prosecution restriction on counsel as proposed in the parties’ Stipulated Protective Order. *Id.* at Section 2(G).

For the above reasons, we deny without prejudice both the Joint Motion and Patent Owner’s unopposed Motion to Seal. Patent Owner has not carried its burden of showing entitlement to the relief requested—that is, entry of a protective order that provides for heightened restrictions on access to information, as compared to the Default Protective Order, and patent prosecution restrictions on counsel. *See* 37 C.F.R. § 42.20(c).

This decision is without prejudice to the parties hereafter requesting entry of a Joint Stipulated Protective Order that provides for heightened restrictions, should “good cause” for such restrictions arise in relation to any particular information subsequently sought to be sealed. In the meantime, the Default Protective Order shall apply to information filed and designated

IPR2014-00377 (Patent 6,635,280 B2)  
IPR2014-00378 (Patent 6,340,475 B2)  
IPR2014-00379 (Patent 6,340,475 B2)

by a party as confidential in these proceedings, including Exhibits 2028–2036, 2048, 2054, 2058, 2074, 2079, 2083, 2105, 2132, 2137–2138, 2142, 2145–2146, and 2148–2149.

The parties are reminded that there is a presumption that any confidential information relied upon in a final written decision of the Board shall become public. Each party shall accept that risk of publication, before placing confidential information into hazard by introducing it into these proceedings.

For the foregoing reasons, it is

ORDERED that the Joint Motion for Entry of Stipulated Protective Order is *denied without prejudice* in each proceeding;

FURTHER ORDERED that Patent Owner’s unopposed Motion to Seal is *denied without prejudice* in each proceeding;

FURTHER ORDERED that the Default Protective Order appearing in the Office Trial Practice Guide, 77 Fed. Reg. 48,756, 48,769–71 (Aug. 14, 2012), is hereby entered in these proceedings; and

FURTHER ORDERED that, unless and until a party demonstrates a need for a protective order that provides for heightened restrictions on access

IPR2014-00377 (Patent 6,635,280 B2)

IPR2014-00378 (Patent 6,340,475 B2)

IPR2014-00379 (Patent 6,340,475 B2)

compared to the Default Protective Order, the Default Protective Order shall apply to information filed and designated by a party as confidential, including Exhibits 2028–2036, 2048, 2054, 2058, 2074, 2079, 2083, 2105, 2132, 2137–2138, 2142, 2145-2146, and 2148–2149.

IPR2014-00377 (Patent 6,635,280 B2)  
IPR2014-00378 (Patent 6,340,475 B2)  
IPR2014-00379 (Patent 6,340,475 B2)

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