

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PURDUE PHARMA L.P.,
Petitioner,

v.

DEPOMED, INC.,
Patent Owner.

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

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

OBERMANN, *Administrative Patent Judge*.

DECISION
*Granting-in-Part Patent Owner's
Motion to Seal with Respect to Certain Exhibits
37 C.F.R. § 42.54*

¹ 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.”

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Pending in the proceedings is Patent Owner's Motion to Seal with Respect to Certain Exhibits ("Motion to Seal" Papers 40, 41, 39²). By Order entered January 20, 2015, we granted the Second Joint Motion for Entry of Stipulated Protective Order ("Order," Papers 39, 40, 38). The second proposed Stipulated Protective Order ("Stipulated Protective Order") applies to confidential information filed in the proceedings. *See* Papers 34, 35, 33 (Exhibit A).

In compliance with the Order, Patent Owner filed redacted versions of Exhibits 2028–2036, 2048, 2054, 2079, 2137, 2138, 2145, 2146, 2148, and 2149. The Motion to Seal, as to the non-public versions of those exhibits, is now in condition for allowance. The terms of the Stipulated Protective Order, entered January 20, 2015, shall apply to those exhibits.

Patent Owner renews its request to seal Exhibits 2013 and 2014, which were inadvertently left out of the Order. Motion to Seal 1, n.1. Exhibit 2013 is a claim chart and Exhibit 2014 is a Declaration of Patent Owner's witness, Dr. Sean Nicholson. *Id.* at 2. Patent Owner alleges that

² Paper numbers refer to IPR2014-00377, IPR2014-00378, and IPR2014-00379 in sequence. The word-for-word identical Motion to Seal was filed in each proceeding.

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both exhibits reflect its confidential business information. *Id.* at 2–3. Public versions of Exhibits 2013 and 2014 have not been filed. Even a cursory review of those exhibits reveals that much, if not all, of the information contained in them is not confidential.

Patent Owner does not show good cause for sealing Exhibits 2013 and 2014 in their entirety. Specifically, Patent Owner does not show sufficiently that Dr. Nicholson’s opinion, based on his element-by-element analysis of how Patent Owner’s commercial product meets the limitations of the challenged patent claims, is confidential. It is unclear why Dr. Nicholson’s opinion, or the entire content of his analysis “interpreting the patent elements as applied to confidential data of [Patent Owner’s] commercial product,” should be shielded from public disclosure. Motion to Seal 2.

If Patent Owner relies upon Dr. Nicholson’s opinion in this proceeding, we require Patent Owner to make public Dr. Nicholson’s opinion, including the non-confidential factual support in his analysis, as reflected in Exhibits 2013 and 2014. To the extent that Dr. Nicholson relies on “confidential data” in support of his opinion, *id.*, or as factual support in his analysis, Patent Owner has not identified that data adequately in

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Exhibit 2013 or 2014, much less shown “good cause” for protecting such data from public disclosure.

The Motion to Seal, as to Exhibits 2013 and 2014, is denied without prejudice to Patent Owner to file, within ten (10) business days of the date of this Decision, a renewed Motion to Seal that identifies, with particularity, the “confidential data” allegedly disclosed in Exhibits 2013 and 2014, and establishes good cause for sealing such data. Patent Owner also shall file, and serve on opposing counsel, public versions of Exhibits 2013 and 2014, in which only factual confidential information is redacted. In the event that Patent Owner does not comply with those instructions, the Board shall expunge from the record Exhibits 2013 and 2014, and will disregard all references in the record to information contained in those exhibits.

Patent Owner also renews its request to seal the entirety of Exhibits 2058, 2074, 2083, 2105, 2132, and 2142. *Id.* at 1. Patent Owner avers that the “highly confidential nature of” the information contained in those documents makes it “impossible to reasonably redact [them] for public disclosure.” *Id.* Based on the content of the Motion to Seal, and our review of those exhibits, we determine that good cause exists to seal Exhibits 2058,

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2074, 2083, 2105, 2132, and 2142. The terms of the Stipulated Protective Order, entered January 20, 2015, shall apply to those exhibits.

The parties are reminded that there is a presumption that confidential information relied upon in a final written decision of the Board shall become public. Furthermore, a motion to expunge the information will not necessarily prevail over the public interest in maintaining a complete and understandable file history. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012). Each party shall accept that risk of publication, before placing confidential information into hazard by introducing it into these proceedings.

The parties are reminded further that a document or thing will be made publicly available, unless a party files a motion to seal that is then granted by the Board. Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,760.

It is

ORDERED that the Motion to Seal is *granted* as to the redacted versions of Exhibits 2028–2036, 2048, 2054, 2079, 2137, 2138, 2145, 2146, 2148, and 2149;

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FURTHER ORDERED that the Motion to Seal is *granted* as to the entirety of Exhibits 2058, 2074, 2083, 2105, 2132, and 2142;

FURTHER ORDERED that the Motion to Seal, as to Exhibits 2013 and 2014, is *denied* without prejudice to file, within ten (10) business days of the entry of this Decision, a renewed Motion to Seal and public versions of Exhibits 2013 and 2014, in which only factual confidential information is redacted;

FURTHER ORDERED that the terms of the Stipulated Protective Order, entered January 20, 2015, shall apply to all documents sealed in these proceedings.

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