

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG BIOEPIS CO. LTD. and BIOCON BIOLOGICS INC.,
Petitioners,

v.

REGENERON PHARMACEUTICALS, INC.,
Patent Owner.

IPR2023-00739¹
Patent 10,888,601 B2

Before JOHN G. NEW, ROBERT A POLLOCK, and RYAN H. FLAX,
Administrative Patent Judges.

NEW, *Administrative Patent Judge.*

ORDER
Granting Patent Owner's Motion to Expunge
37 C.F.R. § 42.56

¹ IPR2024-00201 has been joined with IPR2023-00739. *See* Paper 24

On July 30, 2024, we entered adverse judgement against Patent Owner Regeneron Pharmaceuticals Inc.’s (“Patent Owner”) upon Patent Owner disclaiming all challenged claims of U.S. Patent No. 10,888,601 B2 (“the ’601 patent”). Paper 57; Ex. 2001; 2002; Ex. 3002; Ex. 3003; Ex. 3004.

During the proceeding, on January 24, 2024, we entered an Order granting Patent Owner’s Motion for a Protective Order (the “Protective Order”) in this *inter partes* review. Paper 29. Patent Owner has now filed a Motion (Paper 26, the “Motion”) seeking to expunge certain papers and exhibits from the record. Motion 1. Specifically, Patent Owner seeks expungement of Paper 31² and Exhibits 2043, 2071–2073, 2078, 2082, 2084, 2085, 2120, 2124, 2143–2160, 2162–2168. *Id.* at 1–3. Patent Owner represents that, when it identified the Exhibits it sought to expunge to Petitioner Samsung Bioepis Co., Ltd. (“Petitioner”) prior to filing this motion, Petitioner stated that it “may be able to agree not to oppose [Patent Owner’s] motion” if Patent Owner agreed to provide redacted, public versions of Exhibits 1080 and 1082 in IPR2023-00884 and Ex. 2043 in IPR2023-00739. *Id.* Patent Owner states that “redacted versions of those exhibits were being filed concurrently with this Motion” and that it has conferred with Petitioner, who does not now oppose the Motion. *Id.* However, as of the date of this Order, redacted versions of Exhibits 1080 and 1082 are not yet of record in IPR2023-00884, but Patent Owner does not presently seek their expungement.

² Paper 31 is the unredacted version of Patent Owner’s Response to the Petition. A redacted version of the Response is of record as Paper 32.

Patent Owner represents that good cause exists to grant its Motion. Motion 6–7. Patent Owner argues that the public interest is not advanced by publishing Paper 31 and Exhibits 2043, 2071-2073, 2078, 2082-2085, 2120, 2124, 2143–2160, and 2162–2168. *Id.* at 7. Rather, Patent Owner contends, the Board, in granting Patent Owner’s motion for the Protective Order, found that “good cause” existed because Patent Owner “intend[ed] to submit non-public, confidential research, development or commercial information.”

Patent Owner also states that it has filed a redacted, public version of Paper 31, and a redacted version of Exhibits 2120 and 2043. Motion 7. Patent Owner represents that the remaining confidential Exhibits were not relied upon in either the Board’s Decision Granting Institution (Paper 9) or in its Decision granting Adverse Judgment against Patent Owner (Paper 57). *Id.* Patent Owner states that the remaining Exhibits it seeks to expunge contain sensitive information relating to Patent Owner’s products and finances, and that filing redacted versions of these documents would not be feasible or beneficial to the public, because almost the entirety of each document constitutes Patent Owner’s confidential information. *Id.*

Patent Owner further represents that the documents it seeks to expunge contain confidential, sensitive commercial information, including closely held information related to core business, business operations, and business strategy, and that Patent Owner has provided for the record sufficient high-level descriptions of the confidential information for the public to understand the general subject matter of these materials. Motion 7.

Finally, Patent Owner notes that the Board did not rely upon the confidential information in the Papers or Exhibits in its Order Granting Adverse Judgment against Patent Owner. Motion 9. Therefore, Patent

Owner argues, the public interest in Patent Owner's confidential papers and exhibits is minimal because it is not necessary to understand the proceeding, particularly because all of the remaining challenged claims of the '601 patent have been disclaimed. *Id.*

Confidential information that is subject to a protective order ordinarily becomes public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial. USPTO, *Consolidated Trial Practice Guide*, (November 2019) (the "Guide"), 21–22. Generally, the Board expects that information will be made public when 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. *Id.* 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, pursuant to 37 C.F.R. § 42.56. *Id.* This Rule balances the needs of the parties to submit confidential information with the public interest in maintaining a complete and understandable file history for public notice purposes. *Id.* The Rule also encourages parties to redact sensitive information, where possible, rather than seeking to seal entire documents. *Id.*

Having reviewed Patent Owner's arguments and the record, particularly the Paper and Exhibits that Patent Owner seeks to expunge, we find that good cause exists to expunge the specified Paper and Exhibits from the record of this *inter partes* review. As noted above, this proceeding was terminated once Patent Owner disclaimed all challenged claims of the '601 patent, thus, no final decision was entered on patentability, or addressing the merits, that relied upon the exhibits at issue. We consequently GRANT

Patent Owner's Motion to Expunge Paper 31 and Exhibits 2043, 2071–2073, 2078, 2082, 2084, 2085, 2120, 2124, 2143–2160, 2162–2168. We note for the record that redacted, public versions of Exhibits 1080 and 1082 in IPR2023-00884, have not yet been filed, however, this Order does not touch those Exhibits.

It is therefore:

ORDERED that Paper 31 and Patent Owner's Exhibits 2043, 2071–2073, 2078, 2082, 2084, 2085, 2120, 2124, 2143–2160, 2162–2168 are expunged from the record of this *inter partes* review.

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