

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACRUX DDS PTY LTD., ACRUX LIMITED, and
ARGENTUM PHARMACEUTICALS LLC,
Petitioner,

v.

KAKEN PHARMACEUTICAL CO., LTD. and VALEANT
PHARMACEUTICALS INTERNATIONAL, INC.,¹
Patent Owner.

IPR2017-00190²
Patent 7,214,506 B2

Before ERICA A. FRANKLIN, SUSAN L. C. MITCHELL, and
ROBERT A. POLLOCK, *Administrative Patent Judges*.

MITCHELL, *Administrative Patent Judge*.

DECISION
Patent Owner's Motion to Expunge Confidential Information
37 C.F.R. § 42.56

¹ Patent Owner identifies Bausch Health Companies Inc., formerly known as Valeant Pharmaceuticals International, Inc., as a real party-in-interest. See Paper 87, 1; Paper 115, 1.

² IPR2017-01429 has been joined with the instant proceeding.

Patent Owner filed a Motion to Expunge under 37 C.F.R. § 42.56, Exhibits 1506, 1507, 1511, 1663, 2093 through 2095, 2098, 2099, and 2116A, as well as Papers 52, 64, 69, and 74, because those materials contain “Patent Owner’s Confidential Business Information related to, *inter alia*, proprietary sales and commercial market information and commercially relevant sales data.” Paper 115, 3 (citation omitted).

Patent Owner also requests that Exhibits 2204 and 2205, which contain Patent Owner’s and Petitioner’s confidential business information related to settlement agreements between the parties, also be expunged from the record under 37 C.F.R. § 42.56. *Id.* Patent Owner notes that these exhibits have been confidentially filed with the Federal Trade Commission. *Id.* at 4. Patent Owner represents that the motion is unopposed. *Id.* at 1.

On June 6, 2018, we granted each of the parties’ motions to seal, which sealed the documents that Patent Owner is now seeking to have expunged. *See* Paper 79, 6 (sealing Exhibits 1663, 2093–2095, 2098, and 2099; designated portions of Exhibits 1506, 1507, 1511, and 2116; and Papers 52, 64, 69, and 74, as “Board and Parties Only”). On that same date, we also entered a final written decision that was subsequently vacated on appeal to the United States Court of Appeals for the Federal Circuit, and remanded back to the Board. *See* Paper 80, *Kaken Pharm. Co., Ltd. v. Iancu*, 952 F.3d 1346, 1355 (Fed. Cir. 2020).

After remand, all parties settled their dispute and filed joint motions to terminate, which were granted. *See* Papers 105, 112, 114. The Board also granted the parties’ request to treat two confidential settlement agreements (Exhibits 2204 and 2205) as business confidential information and be kept separate from the file of U.S. Patent No. 7,214,506 B2. Paper 114, 4.

We note that the parties have provided redacted, public versions of Papers 52, 64, 69, and 74, *see* Papers 51, 65, 70, 75, respectively, and also provided redacted, public versions of Exhibits 1506, 1507, 1511, and 2116. Considering the vacation of the final written decision and settlement by the parties before issuance of any further opinion on remand, in addition to the parties' efforts to provide public versions of documents that do not solely contain confidential business information, we find good cause to grant Patent Owner's Motion to Expunge as to these papers and exhibits.

We, however, do not find that Patent Owner has demonstrated good cause to expunge the settlement agreements between the parties reflected in Exhibits 2204 and 2205. As the Board has noted:

35 U.S.C. § 317(b) specifies that settlement agreements "shall be filed in the Office before the termination of the inter partes review;" that subject to request they "shall be treated as business confidential information;" and "shall be kept separate from the file of the involved patents." The statute also requires that settlement agreements remain on file so that they "shall be made available only to Federal Government agencies on written request, or to any person on a showing of good cause." 37 C.F.R. § 42.74(c) includes the same requirement that settlement agreements "be treated as business confidential information" and "be kept separate from the file of the involved patents." 37 C.F.R. § 42.74(c) also requires that settlement agreements remain on file so that they shall be made available "[t]o a Government agency on written request," or "[t]o any other person . . . on a showing of good cause."

Unified Patents, LLC v. Browse3d LLC, IPR2019-01265, Paper No. 14, 3 (PTAB Feb. 25, 2020). We are required to maintain the settlement agreements in the record. *See* 35 U.S.C. § 317(b); 37 C.F.R. § 42.74(c); *see also DTN, LLC v. Farms Technology, LLC*, IPR2018-01412, Paper 20, 10 (PTAB June 14, 2019) (denying motion to expunge collateral agreements to

a settlement because they “fall under the ambit of 35 U.S.C. § 317(b) as agreements that *must be filed* in the Office”) (emphasis added). The fact that the agreements have also been submitted to another federal agency does not alter this requirement.

As Patent Owner noted, we have granted its request to have the settlement agreements be treated as business confidential information and kept separate from the file of the involved patent. *See* Paper No. 115, 3–4; *see also Unified Patents, LLC v. Cassiopeia IP LLC*, IPR2020-00111, Paper 16, 2 (PTAB July 2, 2020) (stating with regard to sealing the settlement agreement and keeping it separate from the involved patent file, “we have already implemented measures to ensure that the settlement agreement will not lose its status as protected confidential information”). Therefore, we deny Patent Owner’s Motion to Expunge as to the settlement agreements, Exhibits 2204 and 2205.

IV. ORDER

Accordingly, it is hereby:

ORDERED that Patent Owner’s Motion to Expunge is *granted in part*;

FURTHER ORDERED that Exhibits 1506, 1507, 1511, 1663, 2093 through 2095, 2098, 2099, and 2116 (confidential version), and Papers 52, 64, 69, and 74, shall be expunged from the record; and

FURTHER ORDERED that Exhibits 2204 and 2205 shall remain in the record as business confidential information and kept separate from the file of U.S. Patent No. 7,214,506 B2.

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