

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CURRENT LIGHTING SOLUTIONS, LLC
D/B/A GE CURRENT

Petitioner,

v.

JIAXING SUPER LIGHTING ELECTRIC APPLIANCE CO., LTD.

Patent Owner.

Case No. IPR2023-00270

Patent No. 9,723,662

**PATENT OWNER'S MOTION UNDER 37 C.F.R. §§ 42.14 AND 42.54 TO
SEAL PATENT OWNER'S PRELIMINARY RESPONSE
AND RELATED CONFIDENTIAL EXHIBIT 2008**

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I. INTRODUCTION

Jiaxing Super Lighting Electric Appliance Co., Ltd. (“Patent Owner”) requests that confidential exhibit 2008 (“the Confidential Exhibit”), as well as portions of Patent Owner’s Preliminary Response quoting or characterizing such document, be sealed under 37 C.F.R. §§ 42.14 and 42.54.

The confidential material Patent Owner is requesting to seal belongs to Petitioner. Good cause to seal exists because Petitioner has represented to Patent Owner that certain information in the Confidential Exhibit is sensitive, non-public information. Patent Owner therefore submits this Motion to Seal under the Protective Order in this case (Paper 8).

Pursuant to 37 C.F.R. § 42.54(a), Patent Owner’s counsel conferred in good faith with Petitioner’s counsel in an attempt to resolve any dispute about this Motion. Petitioner does not oppose this motion.

II. GOVERNING RULES AND PTAB GUIDANCE

While under 35 U.S.C. § 316(a)(1), papers filed in an *inter partes* review are generally open and available for access by the public, a party may file a concurrent Motion to Seal to protect public disclosure of certain confidential information, which has the effect of sealing the information at issue pending resolution of the motion. In determining whether to grant a Motion to Seal, the Board must find “good cause,” 37 C.F.R. § 42.54(a), and “strike a balance

between the public’s Case interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.”

Consolidated Trial Practice Guide, November 2019 (“TPG”), 19. The Board identifies confidential information in a manner “consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for ... confidential research, development, or commercial information.” TPG, 19.

Based on the procedure set forth in the TPG, Patent Owner seeks to prevent the disclosure of information contained in the Confidential Exhibit that Petitioner has designated under the protective order in this case.

III. IDENTIFICATION OF CONFIDENTIAL INFORMATION

The Confidential Exhibit at issue is a contractual agreement (Ex. 2008) that Petitioner produced in this proceeding in response to discovery requests made by Patent Owner. The confidential information also includes portions of Patent Owner’s Preliminary Response that quote or describe the substance of the Confidential Exhibit. Petitioner has designated the Confidential Exhibit as “PROTECTIVE ORDER MATERIAL - OUTSIDE COUNSEL ONLY” under the Protective Order in this proceeding (Paper 8). Under the terms of the Protective Order, this designation “shall only be applied to confidential information that has not been made publicly available and that is competitively sensitive—i.e., if disclosed, could reasonably be used to inform or guide business

decisions that would compete with or otherwise harm the designating party.”

Paper 8, ¶ 3. Further, under the terms of the Protective Order, documents so designated must be filed under seal. Paper 8, ¶ 6(A)(i).

A. The Confidential Exhibit

Patent Owner is not in a position to dispute Petitioner’s designation of its own Confidential Exhibit. Nor is Patent Owner in a position to identify the specific information within the Confidential Exhibit that is confidential, as such information belongs solely to Petitioner. Accordingly, Patent Owner will not attempt to redact the Confidential Exhibit—rather, Patent Owner files the Confidential Exhibit in its entirety, and is not a filing public version of the Confidential Exhibit.

B. Patent Owner’s Preliminary Response

Patent Owner has, to the best of its ability, limited material in its Preliminary Response to nonconfidential information. It has redacted confidential information citing, quoting, or discussing the substance of the Confidential Exhibit. Pursuant to guidance in the TPG and the Protective Order (Paper 8, ¶ 6(A)(ii)), Patent Owner is filing both confidential and non-confidential versions of its Preliminary Response.

To the best of Patent Owner's knowledge, and based on Petitioner's designation of the Confidential Exhibit, the information sought to be sealed has not been published or otherwise made public.

IV. GOOD CAUSE EXISTS FOR SEALING THE CONFIDENTIAL INFORMATION.

By designating the Confidential Exhibit as "PROTECTIVE ORDER MATERIAL — OUTSIDE COUNSEL ONLY" under the Protective Order, Petitioner has represented that public disclosure of the document and information contained therein could be used to compete with or otherwise harm Petitioner. The public interest will not be harmed by granting this Motion to Seal the document as "**PROTECTIVE ORDER MATERIAL.**" To the contrary, at least given Petitioner's designation of the Confidential Exhibit, granting this Motion to Seal would achieve "a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." 77 Fed. Reg. at 48,760. Therefore, good cause exists for granting this motion to seal.

V. RELIEF REQUESTED

For the reasons stated above, Patent Owner requests that the Board seal and protect the Confidential Exhibit and portions of Patent Owner's Preliminary Response discussing the same.

Dated: May 17, 2023

Respectfully submitted,

/Patrick J. McKeever/

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May 2023, true and correct copies of the foregoing PATENT OWNER'S MOTION UNDER 37 C.F.R. §§ 42.14 AND 42.54 TO SEAL PATENT OWNER'S PRELIMINARY RESPONSE AND RELATED CONFIDENTIAL EXHIBIT 2008 were served via electronic mail upon the following counsel of record for Petitioner:

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Dated: May 17, 2023

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