UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERCEDES-BENZ USA, LLC,
Petitioner,

v.

WESTPORT FUEL SYSTEMS CANADA INC.,
Patent Owner

Inter Partes Review No. IPR2023-00351
Patent No. 6,575,138

PATENT OWNER'S MOTION TO SEAL AND ENTER DEFAULT PROTECTIVE ORDER

I. Introduction

Patent Owner Westport Fuel Systems Canada Inc. ("Westport") requests that Exhibits 2002 and 2005-2009 be sealed under 37 C.F.R. § 42.54. Good cause to seal these documents exists because the entirety of the information in the exhibits is sensitive, non-public commercial and technical information of Westport.

II. Governing Rules and PTAB Guidance

Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public, but a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion.

Similarly, 37 C.F.R. § 42.14 provides:

> The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

It is, however, only "confidential information" that is protected from disclosure. 35 U.S.C. § 316(a)(7) ("The Director shall prescribe regulations -- . . . providing for protective orders governing the exchange and submission of confidential information"). In that regard, the *Office Trial Practice Guide*, 77 *Fed. Reg.* 48756, 48760 (Aug. 14, 2012) provides:

> The rules aim to strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information.
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> *Confidential Information*: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. § 42.54.

III. Identification of Confidential Information

The confidential information consists of confidential research and development information of Westport and/or Westport's clients. This information is contained within the following documents

Exhibit 2002: Declaration of David Mumford

Exhibits 2005-2009: Exhibits cited in the Declaration of David Mumford

IV. Good Cause Exists for Sealing the Confidential Information

The Board's rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). Here, the information that Patent Owner seeks to seal is information concerning Westport's confidential development efforts, including internal procedures, analysis performed, component drawings, and internal communications. Specifically, Patent Owner seeks to seal the entirety of Exhibits 2002 and 2005-2009

as redaction would not be practical. Accordingly, there is good cause to grant this motion to seal.

V. PROPOSED PROTECTIVE ORDER

Pursuant to 37 C.F.R. § 42.54(a), Patent Owner proposes that the default protective order found in Appendix B of the Trial Practice Guide be entered. Petitioner has agreed to keep the exhibits confidential but has declined to accept the default protective order without knowing what Patent Owner seeks to keep confidential and has reserved the right to oppose the request for the default protective order or to request that an alternate protective order be entered.

VI. CERTIFICATION OF NON-PUBLICATION

The undersigned counsel certifies the information sought to be sealed by this Motion to Seal has not, to their knowledge, been published or otherwise made public. In that district court proceedings, Ex. 2005 has been produced and designated "CONFIDENTIAL - Outside Attorneys' Eyes Only."

VII. CONCLUSION

For the reasons set forth above, Patent Owner respectfully requests the Board grant this motion to seal and enter the default Protective Order.

Dated: March 23, 2023

Respectfully submitted,

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Derek V. Forinash (Reg. No. 47,231)
Miranda Y. Jones (Reg. No. 64,721)

PORTER HEDGES LLP
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Patent Owner Preliminary Response, together with all exhibits and other documents filed therewith, was served on the Petitioner's counsel of record by email (to which Petitioner has consented) to:

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Dated: March 23, 2023

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