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.

Case IPR2023-00351
Patent 6,575,138

PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO SEAL AND ENTRY OF DEFAULT PROTECTIVE ORDER

Petitioner respectfully opposes Patent Owner's motion to seal and for entry of the default protective order. Paper 7 ("Motion"). Patent Owner did not comply with 37 C.F.R. § 42.54(a), as no Patent did not request or conduct a meet and confer with Petitioner before the Motion was filed. Thus, Petitioner was not provided with any opportunity to consider Patent Owner's reasoning for requesting a protective order, or to attempt to come to an agreement on the appropriate scope of any protective order. For this reason alone, Patent Owner's Motion should be denied. Moreover, Petitioner opposes Patent Owner's Motion because good cause exists to modify the default protective order, which modifications the parties should meet and confer about, all as explained below.

First, Patent Owner first notified Petitioner that it was going to move to file certain exhibits under seal and for entry of the default protective order in an email sent at 2:20pm ET on March 23, 2023, the day its preliminary response was due. (EX1013.) This email did not include any request to meet and confer, did not include any information whatsoever regarding the content of the exhibits Patent Owner sought to file under seal, and did not provide any reasoning why the default protective order would be appropriate. (*Id.*) Petitioner informed Patent Owner of this in a reply email sent at 6:35pm ET, but heard nothing back. (*Id.*) Instead, Patent Owner filed its preliminary response, along with the Motion, later that evening. Patent Owner thus did not comply with the requirements of 37 C.F.R. §

42.54(a), which requires a party moving to seal to "include a certification that the moving party has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute." *See, e.g.*, *New World Medical, Inc. v. Microsurgical Tech., Inc.*, IPR2020-01573, Paper 10 (PTAB Nov. 23, 2020); *Thermo-Fisher Scientific, Inc. v. Regents of Univ. of Cal.*, IPR2018-01367, Paper 11 (PTAB Feb. 7, 2019). Patent Owner's Motion should be denied for this reason alone.

Second, had Patent Owner conferred as required, Petitioner could have raised certain potential modifications or amendments to the default protective order, and the parties could have worked to try to come to agreement on an proposed modified protective order. For example, Petitioner respectfully submits that a modification to clarify that the confidential information may further be accessed by Robert Bosch LLC would be appropriate. There would be good cause for such a modification because Robert Bosch LLC is a real-party-in-interest to and involved in this proceeding. The default protective order does not explicitly provide that real-parties-in-interest or their counsel may access sealed information.

For the foregoing reasons, Petitioner respectfully requests that the Board deny Patent Owner's motion, so that the parties may meet-and-confer regarding the terms of any protective order as required under 37 C.F.R. § 42.54(a).

Dated: April 10, 2023

Respectfully submitted,

/s/ Celine J. Crowson

Celine Jimenez Crowson (Reg. No. 40,357)
Joseph J. Raffetto (Reg. No. 66,218)
Scott Hughes (Reg. 68,385)
Ryan Stephenson (Reg. 76,608)
HOGAN LOVELLS US LLP
555 13th Street N.W.
Washington, D.C. 20004
Telephone: 202.637.5600
Facsimile: 202.637.5910

Counsel for Petitioner Mercedes-Benz USA, LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2023, I caused a true and correct copy of the foregoing to be served upon counsel of record via email:

Derek V. Forinash
Mirand Y. Jones
PORTER HEDGES LLP
1000 Main St., 36th Floor
Houston, TX 77002
Tel: (713) 226-6714
Fax: (713) 226-6314
dforinash@potterhedges.com
mirandajones@poterhedges.com

/s/ Nicole Lynch
Nicole Lynch