

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NANOBEBE US INC.
Petitioner,

v.

MAYBORN (UK) LIMITED
MAYBORN USA, INC.
MAYBORN GROUP LIMITED
Patent Owner.

Case No. IPR2023-00465
Patent 11,207,244

**PETITIONER'S MOTION TO SEAL
AND FOR ENTRY OF PROTECTIVE ORDER**

Petitioner Nanobebe US Inc. (“Nanobebe”) hereby moves for entry of the Default Protective Order appended below as Appendix A. Nanobebe also moves to seal selected portions of Exhibit 1023, which is an exhibit to Petitioner’s Authorized Reply to Patent Owner’s Preliminary Response. The identified Exhibit is a declaration from Mr. Ayal Lanternari, the executive chairman of the Petitioner, that contains confidential business and financial information of Petitioner that should be maintained as confidential, consistent with controlling law and regulations.

In particular, the redacted confidential information relates to Petitioner’s non-public, confidential business and financial information, including its Fiscal Year 2022 revenue, that impacts whether the Board should exercise its discretion to institute the present IPR. The redacted information does not specifically relate to patentability of U.S. Patent No. 11,207,244 (“the ’244 patent”).

Parties are conferring with respect to whether the Board’s Default Protective Order shall apply to confidential material in this Proceeding.

I. MOTION TO SEAL

In an *inter partes* review, it is the default rule that all filings are publicly available. 35 U.S.C. § 326(a)(1); 37 C.F.R. § 42.14. Where a paper contains confidential information, “a motion to seal with a proposed protective order as to the confidential information” may be filed. 37 C.F.R. § 42.55; *see also* 35 U.S.C. §

326(a)(1). A motion to seal and to enter a protective order will be granted if the movant demonstrates a showing of “good cause.” 37 C.F.R. § 42.54(a).

The Board has established a four-pronged test that must be met for a motion to seal to be granted. A movant seeking to seal documents must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4) on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record. *Argentum Pharm. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative) (citing to *inter alia* 37 C.F.R. § 42.54(a)).

The confidential information sought to be sealed is identified below.

1. Exhibit No. 1023 is a declaration from Mr. Ayal Lanternari, the executive chairman of the Petitioner, that contains descriptions of non-public, confidential business and financial information of the Petitioner, including the Petitioner’s revenue for Fiscal Year 2022. This Exhibit as filed is marked “PROTECTIVE ORDER MATERIAL” under the Default Protective Order.

II. GOOD CAUSE EXISTS FOR SEALING THE DESIGNATED PORTIONS OF EXHIBIT 1023

In deciding whether to seal documents, the Board must find “good cause” and must “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.” *Garmin v. Cuozzo*, IPR2012-00001, Paper 36, at 4 (PTAB Apr. 5, 2013). Here, good cause exists for sealing the Exhibit, and the Motion to Seal satisfies the four-factor test in *Argentum*.

First, designated portions of Exhibit 1023 would reveal non-public confidential information. Specifically, the selected portions of the Exhibit described above would reveal information that is Petitioner’s confidential business information. See Section I, *supra*. Petitioner requests that the designated portions of the identified Exhibit be sealed.

Second, there is no concrete harm to the public in keeping this information confidential. The Petitioner’s financial information does not impact the public record concerning substantive issues of validity. See *Grimco, Inc. v. Principal Lighting Group, LLC*, IPR2021-00968, Paper 46 at 3-4 (PTAB Nov. 18, 2022) (granting motion to seal declarations dealing with “confidential financial, commercially-sensitive, and/or business information”); *Everstar Merchandise Co. v. Willis Electric Co.*, PGR2019-00056, Paper 45, at 47 (PTAB Oct. 11, 2022) (finding good

cause to grant motion to seal with respect to “non-public sensitive technical and financial information including sales and profit information, communications, and other highly sensitive nonpublic information that could result in harm and business losses if released to the public”).

Instead, the designated material within Exhibit 1023 relates to financial information of Petitioner, including its Fiscal Year 2022 revenue. That information is not known to the public. Disclosing the details of sensitive non-public financial information, including revenue information, could result in harm to the Petitioner if released to the public.

Lastly, on balance, the interest in maintaining confidentiality outweighs the public interest in having an *entirely* open record. Petitioner respectfully requests that the Board grant this motion to seal. The public interest is well-served in keeping the designated non-public business information included within Exhibit 1023. Sealing this information is consistent with Board precedent. *See, e.g., Grimco*, IPR2021-00968, Paper 46 at 3-4; *Everstar Merchandise*, PGR2019-00056, Paper 45, at 47; *Mylan Pharm Inc. v. Bausch Health Ireland Ltd*, IPR2022-01105, Paper 15 (PTAB Jan. 4, 2023) (granting Default Protective Order with respect to portions of the POPR and related exhibits in their entirety).

Because the designated portions of Exhibit 1023 would reveal this confidential information, Petitioner requests that the designated portions of this Exhibit be sealed.

III. MOTION FOR PROTECTIVE ORDER

The Protective Order attached as Appendix A is identical to the Board's Default Protective Order in Appendix B of the Patent Trial and Appeal Consolidated Trial Practice Guide, November 2019 ("TPG"). Counsel for Petitioner and Patent Owner are conferring regarding execution of the Default Protective Order. confidential material is being served pursuant thereto. Accordingly, pursuant to 37 C.F.R. § 42.54, Patent Owner moves for entry of the attached Protective Order attached as Appendix A.

IV. REQUEST FOR CONFERENCE CALL WITH THE BOARD

Should the Board not be inclined to grant the present Motion to Seal, Petitioner hereby requests a conference call with the Board to discuss any concerns prior to the Board issuing a decision on the Motion.

V. CONCLUSION

The undersigned counsel for Petitioner certifies that the information sought to be sealed by this Motion to Seal has not been published or otherwise made public. For the reasons stated above, the Board should grant Petitioner's motion to seal and for entry of the Default Protective Order submitted herewith.

IPR2023-00465, Patent 11,207,244
Motion to Seal and for Entry of Protective Order

Date: May 5, 2023

Respectfully submitted,

/Eliot D. Williams/

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Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.205(a), this is to certify that I caused to be served a true and correct copy of the foregoing “PETITIONER’S MOTION TO SEAL AND FOR ENTRY OF PROTECTIVE ORDER” via the PTAB’s P-TACTS system and sent via email as detailed below.

Date of service: May 5, 2023

Documents served: PETITIONER’S MOTION TO SEAL AND FOR ENTRY OF PROTECTIVE ORDER

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Date: May 5, 2023

Respectfully submitted,

/Eliot D. Williams/

Eliot D. Williams
Reg. No. 50,822
Lead Counsel for Petitioner

APPENDIX A

UNITED STATES PATENT AND TRADEMARK OFFICE

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IPR2023-00465

Patent No. 11,207,244

DEFAULT PROTECTIVE ORDER

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL.”

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

- (A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named Parties to the proceeding.
- (B) Party Representatives. Representatives of record for a party in the proceeding.
- (C) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.
- (D) In-house counsel. In-house counsel of a party.
- (E) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms

and requirements of the Protective Order by the person they are supporting who receives confidential information.

(F) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than in-house counsel and in-house counsel's support staff, who sign the Acknowledgement shall be extended access to confidential information only upon agreement of the Parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

4. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which

persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) Documents and Information Filed With the Board.

(i) A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-

confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) Documents and Information Exchanged Among the Parties.

Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains its confidentiality.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

EXHIBIT A

NANOBEBE US INC.

v.

**MAYBORN (UK) LIMITED
MAYBORN USA, INC.
MAYBORN GROUP LIMITED**

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U.S. Patent 11,207,244**

Standard Acknowledgment for Access to Protective Order Material

I, _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

Executed on _____, 2023.
