Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NANOBEBE US INC.,
Petitioner,

v.

MAYBORN (UK) LIMITED,
Patent Owner.

Case IPR2023-00467
Patent 10,952,930

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

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

Submitted Electronically

Pursuant to 37 C.F.R. § 42.54, Petitioner Nanobebe US Inc., hereby requests entry of the Board's Default Protective Order appended below as Attachment A (and also submitted as Exhibit 1030). The parties have conferred and agreed to entry of the Default Protective Order. Each of the parties has certified that the party accepts and agrees to the terms of the Protective Order.

"The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information . . . ." 37 C.F.R. § 42.54. As explained below, good cause exists to enter the proposed Protective Order, and to seal Exhibit 2033.

I. Motion for Protective Order

The *Trial Practice Guide* provides that "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." Patent Trial and Appeal Board, *Consolidated Trial Practice Guide*, at 19 (Nov. 2019), <https://www.uspto.gov/TrialPracticeGuideConsolidated> ("Trial Practice Guide"). Further, those 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." *Id.* (citing 37 C.F.R. § 42.54). The *Trial Practice Guide* sets forth specific guidelines on proposing a protective order and provides a

Default Protective Order. *See* Trial Practice Guide, at 19–22, 107–22. In accordance with the above rules and procedures, Petitioner conferred with Patent Owner, and Patent Owner does not oppose entry of the proposed Default Protective Order.

II. Motion to Seal Documents Under the Modified Protective Order

Good cause exists for entry of a Protective Order because information provided during discovery in this Proceeding has involved confidential business information of a non-party. In particular, during the cross-examination deposition of Petitioner's expert, Mr. Brian Silver, Patent Owner inquired of various details regarding Mr. Silver prior employment at a non-party company in the infant feeding market. The questions sought information that Mr. Silver believes to be confidential business information of his prior non-party employer, including confidential information about the non-party's potential business arrangements, product development, sales, and financial condition.

The parties have conferred and have agreed to designate the relevant information as confidential PROTECTIVE ORDER MATERIAL under the Default Protective order, and will file a redacted version of Mr. Silver's deposition transcript, and provide an unredacted version of the transcript for the Board and parties only. *See Snap-On Inc. v. Milwaukee Elec. Tool Corp.*, IPR2015-01242,

Paper 75, at 2–3 (PTAB Sept, 23, 2016) (sealing "sales information," "licensing agreements," and "development documents").

Thus, the parties request that Exhibit 2033 (the unredacted version of Mr. Silver's deposition transcript) be sealed and treated as confidential PROTECTIVE ORDER MATERIAL under the terms of the Proposed Default Protective Order.

The public interest will not be harmed by sealing these agreements and related documents. *See, e.g.*, *Pinnacle Towers LLC v. Airpowered, LLC*, No. 5:15-cv-81-OC-34PRL, 2015 WL 5897524, at *1 (M.D. Fla. Oct. 7, 2015) ("the terms of confidential agreements oftentimes outweigh the public's right of access") (citation and quotation omitted). The deposition transcript is also being filed in redacted form for the public, and only the non-party confidential information has been redacted, ensuring that the public has sufficient access to the record in this case to understand the arguments and evidence presented to the Board. Therefore, good cause exists to seal the unredacted deposition transcript.

III. Conclusion

For the reasons set forth above, Petitioner respectfully submits that good cause exists for entering the proposed Default Protective Order in this proceeding, and to seal Exhibit 2033.

Dated: October 27, 2023

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ATTACHMENT A

DEFAULT PROTECTIVE ORDER

The following Default Protective Order will govern the filing and treatment of confidential information in the proceeding:

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 those persons identified above in (d)(2)(A)–(E), 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 and after signing the Acknowledgment. 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.

(k) Standard Acknowledgement of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

[CAPTION]

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.

[Signature]

CERTIFICATE OF SERVICE

The undersigned hereby certifies on this October 27, 2023, the foregoing

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was served via electronic mail upon the following:

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