

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUM INDUSTRIAL TECHNOLOGY, INC.,
Petitioner,

v.

AMSTED RAIL COMPANY, INC.,
Patent Owner.

IPR2023-00538
Patent 9,365,223 B2

Before JAMES P. CALVE, KEVIN W. CHERRY, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

ORDER
Granting Patent Owner's Motion to Seal and
Protective Order Motion
37 C.F.R. §§ 42.14, 42.54

Patent Owner filed a “Motion to File Confidential Documents under Seal Pursuant to 37 C.F.R. §§ 42.14 and 42.54.” Paper 23 (“Motion to Seal”). Patent Owner moves to seal Exhibits 2010¹, 2013², 2015–2017, 2019–2089, and 2091–2154 (“the Exhibits”).

Patent Owner also filed a “Motion for Protective Order.” Paper 22 (“Protective Order Motion”). The Protective Order Motion seeks entry of the Board’s Default Protective Order. Paper 22, 1; Ex. 2159.

Patent Owner represents that Petitioner does not oppose the Protective Order Motion. Paper 22, 1. Petitioner indicates that it does not oppose Patent Owner’s Motion to Seal. Paper 22, 2.

For the reasons discussed below, we *grant* Patent Owner’s Motion to Seal and Patent Owner’s Protective Order Motion.

The record of an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. Only “confidential information” may be protected against public disclosure. 35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54. The Board observes a strong public policy in favor of making information filed in *inter partes* review proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

¹ Exhibit 2010 is the Declaration of Michael I. Shamos, Ph.D. Patent Owner filed a redacted public version of this declaration. *See* Ex. 2161.

² Exhibit 2013 is the Declaration of Andrew Martin. Patent Owner filed a redacted public version of this declaration. *See* Ex. 2160.

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes a sufficient showing 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, Paper 27 at 3–4; *see also Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB April 6, 2015) (requiring a showing that information has not been “excessively redacted”).

In the Motion to Seal, Patent Owner seeks to seal the Exhibits, which include emails and presentations concerning “internal Amsted documents,” “Amsted products and development,” “IONX information from the edge,” and “[e]mail correspondence and meeting invitations with third parties pursuant to a non-disclosure agreement.” Paper 23, 3–5. Patent Owner explains that the Exhibits contain non-public, confidential, proprietary, commercially sensitive, and competitive information. *Id.* Patent Owner also states that publicly disclosing the exhibits “is likely to cause economic harm or significant competitive disadvantage.” Paper 23, 2.

With respect to the Declarations of Dr. Michael Shamos and Andrew Martin, Patent Owner seeks to redact certain portions which incorporate the confidential subject matter from the Exhibits. Paper 23, 1–2.

Based on our review of the Exhibits, we are persuaded that good cause exists to seal the Exhibits because they contain confidential,

potentially sensitive information, because Patent Owner would be harmed by not sealing the information, and because the interest in maintaining the information as confidential outweighs the public interest in having the information unsealed. Accordingly, we conclude that good cause exists to maintain the Exhibits under seal.

Accordingly, it is

ORDERED that Patent Owner's Motion to Seal is *granted* with respect to Exhibits 2010, 2013, 2015–2017, 2019–2089, and 2091–2154; and

FURTHER ORDERED that the Default Protective Order (Exhibit 2159) is entered in the above-captioned proceeding.

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