

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

Case IPR2023-00539

Patent No. 9,981,673

MOTION TO FILE CONFIDENTIAL DOCUMENTS UNDER SEAL

PURSUANT TO 37 C.F.R. §§ 42.14 AND 42.54

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Amsted Rail Company, Inc. (“Amsted” or “Patent Owner”) respectfully submits this Motion to Seal certain exhibits filed with its Patent Owner Response, including the Declaration of Dr. Michael Shamos (Exhibit 2010) and the Declaration of Andrew Martin (Exhibit 2013), both of which are being concurrently filed with this Motion. Amsted is concurrently filing redacted versions of the above referenced documents.¹

Pursuant to the Trial Practice Guide November 2019 Update, “[t]he terms of a protective order take effect upon the filing of a Motion to Seal by a party, and remain in place until lifted or modified by the Board.” (Appendix B, § (b).) Accordingly, Amsted understands that the protective order (Exhibit 2159) proposed by Amsted took effect upon filing of Amsted’s Motion to Seal and remains in effect for this Motion to Seal. Amsted and Petitioner Hum Industrial Technology, Inc. (“Hum”) have met and conferred on this Motion.

¹ Some of the supporting exhibits to Amsted’s Patent Owner’s Response and expert declarations contain confidential business and identity information and mostly or entirely consist of non-public confidential information. and therefore no public redacted versions of these documents are being filed by Amsted.

I. BACKGROUND

Amsted respectfully moves to file and retain under seal the Exhibits listed below, as well as the Declaration of Dr. Michael Shamos (Exhibit 2010) and the Declaration of Andrew Martin (Exhibit 2013) that incorporate the subject matter of the below-listed Exhibits, all of which are being concurrently filed with this Motion.

II. GOOD CAUSE EXISTS FOR SEALING THE EXHIBITS CONTAINING CONFIDENTIAL INFORMATION

Amsted submits that each of the Exhibits summarized in the table below are believed to contain, or are alleged by the parties here or third parties because they contain, confidential, proprietary, and/or commercially sensitive information or information that otherwise could be potentially prejudicial to the business or operations of the Producing Party, contains or reflects information that is extremely confidential and/or sensitive in nature and the Producing Party reasonably believes that the disclosure of such Discovery Material is likely to cause economic harm or significant competitive disadvantage to the Producing Party, or contains confidential, proprietary or trade secret material. Amsted provides good cause below to the extent currently known or available for sealing each of the listed Exhibits.

Amsted's Response, the Declaration of Dr. Michael Shamos (Exhibit 2010) and the Declaration of Andrew Martin (Exhibit 2013) reproduces certain subject matter of the Exhibits below and should be sealed for the same reasons.

Exhibit(s)	Good Cause for Filing Under Seal
2015-2016 2022 2024-2028 2030-2033 2038-2041 2049 2056 2058 2076 2082-2083 2086 2089 2091 2099 2102 2109 2115 2126 2129-2131 2133 2148	Email correspondence and meeting invitations containing non-public, confidential, proprietary, commercially sensitive, and competitive information concerning internal Amsted documents as well as personal identity information of third parties such as email addresses.

2152 2154	
2017	PowerPoint containing non-public, confidential, proprietary, commercially sensitive, and competitive information regarding IONX information from the edge.
2029, 2035, 2045, 2048, 2053, 2080, 2112	Monthly status reports containing non-public, confidential, proprietary, commercially sensitive, and competitive information regarding Amsted products and development.
2019-2021 2023 2034 2036-2037 2042-2044 2046-2047 2050-2052 2054-2055 2057 2059-2075 2077-2079 2081 2084-2085 2087-2088 2093-2098	Email correspondence and meeting invitations with third parties pursuant to a non-disclosure agreement, containing non-public, confidential, proprietary, commercially sensitive, and competitive information as well as personal identity information of third parties such as email addresses.

2100-2101	
2103-2108	
2110-2111	
2113-2114	
2116-2125	
2127-2128	
2132	
2134-2135	
2137-2147	
2150-2151	
2153	

III. CERTIFICATION OF NON-PUBLICATION

Counsel for Amsted certifies the information sought to be sealed by this Motion to Seal has not been published or otherwise made public to the best of its knowledge.

IV. PROTECTIVE ORDER

Concurrently with the present motion, Amsted filed an Unopposed Motion for Protective Order on October 19, 2023.

V. REQUEST FOR CONFERENCE CALL WITH THE BOARD

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

Respectfully submitted,

Dated: October 19, 2023

By: /Ryan N. Miller/
Ryan N. Miller
Reg. No. 68,262
Counsel for Patent Owner
Amsted Rail Company, Inc.

CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e)(4))

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the 19th day of October 2023 a complete and entire copy of the attached MOTION TO FILE CONFIDENTIAL DOCUMENTS UNDER SEAL PURSUANT TO 37 C.F.R. §§ 42.14 AND 42.54 was provided via email to the Petitioner by serving the following email addresses:

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Electronic service was used with Petitioner's consent (*See* Petition, Paper 1 at 2;
Patent Owner's Mandatory Notice, Paper 5 at 5).

Dated: October 19, 2023

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