

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VANTAGE SPECIALTY CHEMICALS, INC.,
Petitioner,

v.

CARGILL, INC.,
Patent Owner.

IPR2023-00589
Patent 11,248,245 B2

Before SHERIDAN K. SNEDDEN, TIMOTHY G. MAJORS, and
MICHAEL A. VALEK, *Administrative Patent Judges*.

MAJORS, *Administrative Patent Judge*.

ORDER

Denying Without Prejudice Patent Owner's Unopposed Motion to Seal and
for Entry of Protective Order
37 C.F.R. §§ 42.5, 42.14, 42.54

I. INTRODUCTION

On December 6, 2023, Patent Owner filed a motion to seal and further requested entry of a protective order. *See generally* Paper 23 (“Motion” or “Mot.”); Paper 24 (“Proposed Protective Order”).¹ Patent Owner indicates that motion is unopposed. Mot. 2. The date for any opposition to the Motion has passed. For the reasons below, Patent Owner’s Motion is denied without prejudice. Patent Owner may file a new motion to seal and for entry of a protective order in accordance with the following guidance.

As an initial matter, the Board recognizes “a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in an issued patent and therefore affects the rights of the public.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, Paper 34 (PTAB Mar. 14, 2013), 1–2. Except as otherwise ordered by the Board, the record of an *inter partes* review shall be made available to the public. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14.

The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). And the standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a). In determining whether good cause has been shown in relation to motions to seal, the Board has identified the following considerations: “(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,

¹ Patent Owner filed similar papers in IPR2023-01037 and IPR2023-01038 but, for convenience, we cite only the papers entered in IPR2023-01036.

an interest in maintaining confidentiality outweighs the strong public interest in having an open record.” *Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative), 2–3.

Patent Owner’s Motion lacks specificity about the relief Patent Owner is seeking and a sufficient explanation why that relief is warranted. For example, several exhibits have been filed such that they are accessible by only the parties and the Board. But the Motion does not expressly identify any of those exhibits or explain why each of them should be sealed. If Patent Owner refiles a motion to seal as permitted below, the motion should itemize the papers and exhibits that Patent Owner contends should be sealed and explain why good cause supports sealing such exhibits.²

Patent Owner also filed the Declaration of Dr. Thomas Schultz as confidential, such that it is accessible by only the parties and the Board. Ex. 2009. This declaration is not mentioned in the Motion. And it does not appear that Patent Owner has filed a public, redacted-version of that declaration, which is almost certainly not confidential in its entirety. The absence of a public version of testimony from Patent Owner’s principal declarant is contrary to the openness of proceedings before the Board and frustrates the public’s ability to understand the record. If Patent Owner refiles a motion, it must explain why Dr. Schulz’s declaration should be sealed in its entirety or provide a redacted version of such declaration explaining (by paragraph number, as appropriate) why designated portions of the declaration should be sealed.

² As appropriate, Patent Owner may group exhibits together where the same reasoning applies to each of the exhibits within such group.

Lastly, Patent Owner requests entry of a protective order that is more restrictive than the Board's default order without explaining why those deviations are justified. *See* Ex. 2065 (redline version of protective order showing changes to the Board's Default Protective Order). The Motion states that "[g]ood cause exists to deviate from the Default Protective Order," but such *ipse dixit* assertion is no explanation at all. Mot. 2. And the absence of a sufficient explanation is especially glaring here because the changes to the Board's default order include provisions (i.e., prosecution bar) that the Board does not ordinarily allow. Ex. 2065, 4–5; Consolidated Trial Practice Guide ("Trial Practice Guide")³ at 116 (noting, e.g., that "prosecution bars are rarely appropriate in proceedings before the Board").

For the above reasons, Patent Owner's Motion is denied but leave is given for Patent Owner to file a renewed motion to seal and for entry of a protective order within fourteen days of this order. During this time and until such time as the Board may decide any such renewed motion, the materials currently filed as confidential and available to the Board and parties only will remain provisionally sealed.

II. ORDER

ORDERED that Patent Owner's Motion is *denied without prejudice*;

FURTHER ORDERED that Patent Owner may file a Renewed Motion to Seal and for Entry of Protective Order within fourteen (14) days of this Order; and

³ *see also* 84 Fed. Reg. 64,280 (Nov. 21, 2019); available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

FURTHER ORDERED that, if no renewed motion is filed by Patent Owner within fourteen (14) days of this Order, all papers and exhibits filed by Patent Owner that are presently designated as confidential and available to only the Board and the parties will be made available to the public; and

FURTHER ORDERED that, if Patent Owner timely files a renewed motion as provided above, all papers and exhibits filed by Patent Owner that are presently designated as confidential and available to only the Board and the parties will remain provisionally sealed until such time as the Board decides such renewed motion.

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