

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VANTAGE SPECIALTY CHEMICALS, INC.,
Petitioner,

v.

CARGILL, INCORPORATED,
Patent Owner.

Case IPR2023-00589
Patent 11,248,245

JOINT PARTIES' MOTION TO SEAL

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner, Cargill, Incorporated (“Cargill”), and Petitioner, Vantage Specialty Chemicals, Inc. (“Vantage”), collectively, the “Parties,” respectfully and jointly request the Board to authorize the filing under seal of certain filings in this case, including the Patent Owner’s Response and Exhibits 2014, 2050, 2051, 2052, 2053, 2054, 2055, and 2057, filed with the Patent Owner Response on December 6, 2023. The Parties also respectfully request the Board to authorize the filing of a redacted version of Patent Owner’s expert declaration from Dr. Tom Schultz, Exhibit 2009.

The Parties request that the Proposed Protective Order, filed concurrently herewith, govern the materials in this proceeding. As explained in the concurrently-filed Submission of Proposed Protective Order, good cause exists to deviate from the Default Protective Order.

In determining whether to grant a Motion to Seal, the Board must find “good cause” and “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.” 37 C.F.R. § 42.54(a); 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). “Confidential information means trade secret or other confidential research, development, or commercial information.” 37 C.F.R. § 42.2.

Good cause exists to seal the Patent Owner’s Response and selected exhibits filed therewith. *See, e.g., Telebrands Corp. v. Tinnus Enterprises, LLC*, No.

PGR2015-00018, Decision on Motion to Seal (Paper 41) at 2 (Good cause to seal is warranted when documents “contain ‘sensitive business information’ or discuss other exhibits that contain sensitive information.”); *see also Wright Medical Technology, Inc. v. Biomedical Enterprises, Inc.*, IPR2015-00786, Decision on Motion to Seal (Paper 37) at 2 (The Board granted motion to seal on documents containing “descriptions of Patent Owner’s manufacturing details” and “deposition transcripts of...employees that discuss business strategies, corporate management details, or product designs, testing, or manufacturing details that [one party] has deemed to be confidential.”). Furthermore, public disclosure of the Patent Owner’s Response has the potential to significantly harm both Patent Owner and Petitioner’s competitive positions because it would allow competitors to access highly sensitive business information regarding research & development, manufacturing processes, and process information, as explained in more detail below with respect to the specific exhibits cited and described in the Patent Owner’s Response.

Both Parties note that all of the exhibits referenced below (except for the declaration of Dr. Schultz, Exhibit 2009) were produced by the Parties in a related district court litigation (*Cargill, Incorporated v. Vantage Specialty Chemicals, Inc.*, No. 1:22-cv-00979-RGA-SRF) and are designated as Confidential in their entirety under the protective order in the related district court case. Under similar

circumstances in which a parallel district court case exists, the Board has found good cause to seal “documents that are subject to a protective order in related district court litigation.” PGR2015-00018, (Paper 41) at 2; *see also Weber, Inc. v. Provisur Technologies, Inc.*, No. IPR2020-01556, Decision on Motion to Seal and Enter Protective Order (Paper 12) at 3.

Cargill’s positions with respect to the harm associated with the public disclosure of Exhibits 2009 and 2014 are set forth below:

- Exhibit 2009: A portion of paragraph 141 in Dr. Schultz’s declaration discloses the confidential manufacturing information in Exhibit 2014, addressed below. Additionally, the title of each of the exhibits included in this motion to seal has also been redacted from the declaration. A redacted copy of Dr. Schultz’s declaration is filed concurrently with this motion.
- Exhibit 2014: This document discloses confidential manufacturing information, including specific details of each step of Cargill’s manufacturing process for its FloraEsters commercial product. These details are not available to the public and would allow Cargill’s competitors access to highly sensitive and detailed information about Cargill’s manufacturing practices. There is a need to rely on these

documents in the trial to exemplify post-processing of commercial jojoba wax ester products.

Vantage's positions with respect to the harm associated with the public disclosure of Exhibits 2050, 2051, 2052, 2053, 2054, 2055, and 2057 are set forth below:

- Exhibit 2050: This document is an internal Vantage PowerPoint regarding research and development surrounding Vantage's jojoba business, including confidential information regarding processing and extraction of jojoba, a study on certain effects jojoba has on skin, certain contemplated changes to Vantage's jojoba esters manufacturing process, and financial information. Vantage does not make these details available to the public because it would allow Vantage's competitors to understand Vantage's internal strategies and unfairly compete against Vantage. While Vantage disputes the relevance of this document, Cargill relies on it in support of its arguments pertaining to secondary considerations.
- Exhibits 2051, 2052: These documents are (i) an internal email between Vantage scientists regarding research and development relating to jojoba esters and (ii) a technical summary which is attached as a Word document to the cover email. These documents include

confidential, technical details regarding research and development and testing of certain manufacturing processes relating to jojoba esters, which Vantage does not make available to the public in order to prevent Vantage's competitors from unfairly competing against Vantage. While Vantage disputes the relevance of these documents, Cargill relies on them in support of its arguments pertaining to secondary considerations.

- Exhibit 2053: This document is an internal Vantage email regarding patent prosecution and competitive intelligence, as well as research and development. Vantage does not make these details available to the public because it would allow Vantage's competitors to understand Vantage's internal strategies and unfairly compete against Vantage. While Vantage disputes the relevance of this document, Cargill relies on it in support of its arguments pertaining to secondary considerations.
- Exhibit 2054: This document is the confidential deposition transcript (taken in the district court litigation) of Vantage scientist Michael Savidakis, who testified among other things regarding numerous aspects of Vantage's business and technical development of Vantage's processes, including details regarding batch runs, composition of its

feedstock, supplier information, and research and development strategies. Vantage does not make these details available to the public because it would allow Vantage's competitors to understand Vantage's internal strategies and unfairly compete against Vantage. While Vantage disputes the relevance of this document, Cargill relies on it in support of its arguments pertaining to secondary considerations.

- Exhibit 2055: This is an internal email chain between Vantage scientists that includes confidential, technical details regarding research and development and testing of certain manufacturing processes relating to jojoba esters, which Vantage does not make available to the public in order to prevent Vantage's competitors from unfairly competing against Vantage. While Vantage disputes the relevance of this document, Cargill relies on it in support of its arguments pertaining to secondary considerations.
- Exhibit 2057: This document is an internal Vantage PowerPoint regarding various confidential projects at the company, including status updates, budget information, and decision points for each project. Vantage does not make these details available to the public because it would allow Vantage's competitors to understand

Vantage's internal strategies and unfairly compete against Vantage.

While Vantage disputes the relevance of this document, Cargill relies on it in support of its arguments pertaining to secondary considerations.

For these reasons, the Parties have designated the Confidential Materials as "Confidential" under the Proposed Protective Order.

Undersigned counsels, on behalf of Patent Owner and Petitioner, certify that the information sought to be sealed has not, to their knowledge, been published or otherwise made public.

Respectfully submitted,

Date: February 2, 2024

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/ Eric S. Lucas /
Eric S. Lucas (Reg. No. 76,434)
Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), the undersigned certifies that on February 2, 2024, a complete and entire copy of this Joint Motion to Seal was provided via email, to the Petitioner by serving the correspondence addresses of record as follows:

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