

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VANTAGE SPECIALTY CHEMICALS, INC.,
Petitioner,

v.

CARGILL, INCORPORATED,
Patent Owner.

Case No. IPR2023-00589
U.S. Patent No. 11,248,245

**JOINT MOTION TO SEAL PETITIONER'S REPLY AND
EXHIBITS 1043, 1045, AND 1046**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner, Vantage Specialty Chemicals, Inc. (“Vantage”) and Patent Owner, Cargill, Incorporated (“Cargill”), collectively, the “Parties,” respectfully and jointly request the Board to authorize the filing under seal of Petitioner’s Reply and Exhibits 1043, 1045, and 1046, filed therewith on February 27, 2024.¹ The Parties further respectfully request that the Proposed Protective Order (Paper 32, Exhibit A) govern the materials in this proceeding.

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 Petitioner’s Reply and Exhibits 1043, 1045, and 1046 cited therein. *See, e.g., Telebrands Corp. v. Tinnus Enterprises, LLC*, No. PGR2015-00018, Decision on Motion to Seal (Paper 41) at 2 (granting motion to

¹ Petitioner has filed a public, redacted version of Petitioner’s Reply filed concurrently with this motion that redacts references both to the Exhibits referenced herein and those referenced in Paper No. 29, currently pending.

seal documents that contained “sensitive business information” or discussed other exhibits that contained “sensitive information”); *see also Wright Medical Technology, Inc. v. Biomedical Enterprises, Inc.*, IPR2015-00786, Decision on Motion to Seal (Paper 37) at 2 (granting motion to seal documents that contained “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.”). Further, public disclosure of Petitioner’s Reply and Exhibits 1043, 1045, and 1046 has the potential to significantly harm both Petitioner’s and Patent Owner’s competitive positions because it would allow competitors to access highly sensitive business information regarding research and development, manufacturing processes, and process information, as explained in more detail below with respect to the specific exhibits cited and described in the Petitioner’s Reply.

Both Parties note that all of the aforementioned exhibits were designated as Confidential in their entirety under the protective order in the parallel district court litigation (*Cargill, Incorporated v. Vantage Specialty Chemicals, Inc.*, No. 1:22-cv-00979-RGA-SRF). 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.*, IPR2020-01556, Decision on Motion to Seal and Enter Protective Order (Paper 12) at 3.

Cargill's position with respect to the harm associated with the public disclosure of Exhibit 1043 is set forth below:

- Exhibit 1043: This document is a deposition transcript of Mr. Addy, an inventor on the U.S. Patent No. 11,248,245 which is the subject of this proceeding, both in his personal capacity and as a company representative pursuant to FRCP §30(b)(6) in a parallel district court litigation pending in Delaware. The transcript contains confidential Cargill information and discusses confidential exhibits regarding research, testing, and development activities, manufacturing processes for Cargill's Floraester® products, customer communications, supplier communications, business strategies, commercial information, and financial information for Cargill's jojoba business, including confidential information regarding processing and extraction of jojoba, certain contemplated changes to Cargill's jojoba esters manufacturing process, and financial information. Cargill does not make these details available to the public because it would allow Cargill's competitors to understand Cargill's internal strategies and unfairly compete against

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

Vantage's positions with respect to the harm associated with the public disclosure of Exhibits 1045 and 1046 are set forth below:

- Exhibit 1045: This document is an internal confidential Vantage PowerPoint regarding research and development goals, concerns, deliverables, and status updates surrounding Vantage's jojoba business and other businesses, including confidential information regarding jojoba esters testing and certain jojoba esters manufacturing process development tasks and strategies, as well as details regarding market analysis and process development details regarding two other Vantage proposed business lines. 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. Vantage relies on this to support its arguments pertaining to the absence of secondary considerations.
- Exhibit 1046: This document is an internal Vantage technology update PowerPoint regarding various confidential projects at the company, including status updates, product development and strategy information, budget information, business projections, 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. Vantage relies on this to support its arguments pertaining to the absence of secondary considerations.

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

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

Respectfully submitted,

Date: February 27, 2024

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

/Grace J. Kim /
Grace J. Kim (Reg. No. 71,977)
Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), the undersigned certifies that on February 27, 2024, a complete and entire copy of this Joint Motion to Seal was provided via email, to Patent Owner by serving the correspondence addresses of record as follows:

W. Karl Renner, Reg. No. 41,265
Grace J. Kim, Reg. No. 71,977
Ahmed J. Davis, *Pro Hac Vice*
Casey M. Kraning, *Pro Hac Vice*
Michael J. Kane, Reg. No. 37,722

Fish & Richardson P.C.
60 South Sixth Street, Suite 3200
Minneapolis, MN 55402
E-mail: IPR47604-0020IP1@fr.com

/s/ Eric S. Lucas

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