

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFESCAN, INC.
Petitioner,

v.

FACET TECHNOLOGIES, LLC
Patent Owner.

Case No. IPR2023-00712
Patent No. 8,840,635

PETITIONER'S MOTION TO SEAL

Petitioner LifeScan, Inc. (“Petitioner”) moves to seal portions of its Reply to Patent Owner’s Response as well as Exhibits 1039, 1046, 1052, and 1056.

Patent Owner has marked each of Exhibits 1039 and 1056 as “HIGHLY CONFIDENTIAL –ATTORNEYS’ EYES ONLY” under the terms of the governing Protective Order. In so marking, Patent Owner represents that that these exhibits consist of information that is “considered to be extremely sensitive by the Designating Party who holds a good-faith belief that the disclosure of such [information] to another Party or Non-Party would create a substantial risk of competitive harm that could not be avoided by less restrictive means, including but not limited to trade secret or other confidential research and development, financial, or other commercial information.” *See* December 19, 2023 Patent Owner Motion to File Documents Under Seal and for a Protective Order, Appendix A at Section 2.9.

Exhibit 1046 consists of a declaration and an expert report from Petitioner’s damages expert in the underlying district court litigation. Portions of Exhibit 1046 contain nonpublic information regarding Petitioner’s internal sales information, confidential agreements, internal business practices, and other internal business communications and analyses. The public disclosure of this confidential information would create a significant risk of competitive injury and particularized harm, and would prejudice Petitioner by disclosing Petitioner’s confidential

information. Petitioner would be further harmed by the disclosure of this information because it would grant Petitioner's competitors, potential competitors, and customers access to non-public and commercially sensitive information about Petitioner's financial information and internal business practices, which competitors could use in competition with Petitioner. Portions of Exhibit 1046 also contain nonpublic information regarding Patent Owner's internal communications and financial information that Patent Owner has marked as "HIGHLY CONFIDENTIAL –ATTORNEYS' EYES ONLY."

Exhibit 1052 consists of a deposition transcript from one of Petitioner's corporate witnesses. Portions of Exhibit 1052 contain nonpublic information regarding Petitioner's internal market share analysis, as well as internal marketing practices, research, and overall business strategy. The public disclosure of this confidential information would create a significant risk of competitive injury and particularized harm, and would prejudice Petitioner by disclosing Petitioner's confidential information. Petitioner would be further harmed by the disclosure of this information because it would grant Petitioner's competitors, potential competitors, and customers access to non-public and commercially sensitive information, which competitors could use in competition with Petitioner.

Finally, with respect to its Reply Brief, Petitioner seeks to seal those portions that quote from or otherwise reference the exhibits discussed above for which sealing has been sought.

For each of these reasons, Petitioner’s motion to seal should be granted. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (“sources of business information that might harm a litigant’s competitive standing,” constitute “compelling reasons” to seal); *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, No. 12- CV-03844-JST, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (“pricing, profit, and customer usage information, when kept confidential by a company, is appropriately sealable under the ‘compelling reasons’ standard where that information could be used to the company’s competitive disadvantage”); *U.S. Ethernet Innovations, LLC v. Acer, Inc.*, C 10-3724 CW, 2013 WL 4426507, at *4-5 (N.D. Cal. Aug. 14, 2013) (granting third party plaintiffs motion to seal after finding that third party plaintiffs licensing and settlement agreement contained sensitive information).

Dated: March 22, 2024

Respectfully Submitted,

/ Michael J. Lyons/

Michael J. Lyons, Reg. No. 37,386

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), lead counsel for Petitioner hereby certifies that on March 22, 2024 a copy of this **PETITIONER’S MOTION TO SEAL** was served via email to the counsel of record:

S. Giri Pathmanaban
giri.pathmanaban@lw.com
Susan Tull
susan.tull@lw.com
Steven Peters
steven.peters@lw.com
Benjamin J. Behrendt
benjamin.behrendt@lw.com

Dated: March 22, 2024

/ Michael J. Lyons /
Michael J. Lyons, Reg. No. 37,386