

Filed on behalf of: Facet Technologies, LLC

Entered: May 3, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFESCAN, INC.,
Petitioner,

v.

FACET TECHNOLOGIES, LLC,
Patent Owner.

IPR2023-00712
Patent 8,840,635

PATENT OWNER'S MOTION TO SEAL

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Facet Technologies, LLC (“Facet”) respectfully requests the Board authorize the filing under seal of Patent Owner’s Sur-Reply and Opposition to Petitioner’s Motion to Exclude (“Opp.”).

II. THE BOARD SHOULD SEAL THE OPPOSITION

A. Good Cause Exists to Seal the Opposition

The Trial Practice Guide provides that “the rules aim to 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.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, the rules “identify confidential information in a manner consistent with Fed. R. Civ. P. 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.* (citing 37 C.F.R. § 42.54).

The Opposition opposes Petitioner’s Motion to Exclude (Paper 44) certain exhibits, including those filed under seal with Patent Owner’s Response (Paper 21)—Exs. 2024, 2040, 2044, 2045, 2050, and 2051 (“Challenged Exhibits”). *See* Paper 20 (Patent Owner’s Unopposed Motion to File Documents Under Seal and for a Protective Order). In so doing, the Opposition discusses the content of some of those exhibits.

Here, good cause exists to seal the Opposition for the same reasons as discussed in Paper 20 relating to the Challenged Exhibits. As described in more detail in Paper 20, the information in these materials that Facet seeks to seal falls into general categories: (1) non-public financial and business information (e.g., internal records of revenue and profits and agreements); and (2) non-public technical information relating to the design and functionality of Facet's and LifeScan's lancets (e.g., internal communications regarding design and design files). As explained in detail for each exhibit in Paper 20, good cause exists to seal the Challenged Exhibits for several reasons. First, each contains highly sensitive, non-public, commercial information, disclosure of which would create an elevated risk of commercial or apparent harm to Facet or LifeScan. Second, all of the Challenged Exhibits are designated under the protective order in the related district court litigation as being confidential or highly confidential and restricted to attorneys' eyes only.

The Board should grant this motion in its entirety.

B. Good Cause Exists to Seal the Sur-Reply

Patent Owner's Sur-Reply contains discussion of various confidential, previously-filed exhibits, including Exhibits 1046 (Rosenfarb Declaration), sealed portions of Petitioner's Reply (Paper 32), and Exhibit 2044 (Asahi Emails). Exhibit 1046 and Petitioner's Reply are confidential and sealed with good cause based on Petitioner's Motion to Seal, Paper 31. Exhibit 2044 is confidential and sealed with

good cause based on Patent Owner's Motion to Seal, Paper 20. As described in more detail in Papers 20 and 31, the information in these materials falls into general categories: (1) non-public financial and business information (e.g., internal records of revenue and profits and agreements); and (2) non-public technical information relating to the design and functionality of Facet's and LifeScan's lancets (e.g., internal communications regarding design and design files). Good cause exists to seal Patent Owner's Sur-Reply discussing this confidential information for the same reasons as presented in those previous motions. Further, Facet will file a redacted copy of Patent Owner's Sur-Reply when it receives redactions of Petitioner's confidential information from Petitioner.

III. CONCLUSION

For the foregoing reasons, Facet respectfully requests the PTAB grant this motion.

Respectfully submitted,

Dated: May 3, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 3rd day of May, 2024, a true and correct copy of the foregoing **Patent Owner's Motion to Seal** was served by electronic mail on Petitioner's lead and backup counsel at the following email address:

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