

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOM ENTERPRISES, LLC,
Petitioner,

v.

ELAINE AND REINHOLD W. VIETH,
Petitioners.

Case IPR2023-00726
Patent 9,066,958

PETITIONER'S MOTION TO SEAL

I. Introduction

Pursuant to 37 CFR § 42.54, Petitioner Mom Enterprises, LLC respectfully moves to seal Petitioner's Opposition to Patent Owners' Motion for Additional Discovery (Paper 49).

II. Applicable Legal Principles for Sealing Confidential Information

A party seeking to protect confidential information may seek entry of a protective order in a proceeding before the Board. *See, e.g., Garmin Int'l, Inc. v. Cuozzo Speed Techs, LLC*, IPR2012-00001, Paper 34 (PTAB Mar. 14, 2013). Upon a showing of good cause, the Board may enter a Protective Order to protect from public disclosure such confidential information as disclosed by a party during the course of a proceeding before the Board. *See* 37 CFR § 42.54. Petitioner submits this Motion to safeguard the confidential information of the relevant parties to this proceeding, pursuant to the proposed Protective Order.¹ *See* Paper 47.

¹ The relevant parties with respect to this Motion are MOM Enterprises, LLC ("MOM" or "Petitioner") and Elaine and Reinhold W. Vieth ("Patent Owners"). The parties filed a Joint Motion for Entry of Stipulated Protective Order (Paper 47), which is pending before the Board.

III. Good Cause Exists for Sealing the Unredacted Version of Petitioner's Opposition

Petitioner's Opposition to Patent Owners' Motion for Additional Discovery includes confidential information designated as Confidential- Attorneys' Eyes Only pursuant to the proposed Protective Order. *See* Paper 47. Good cause exists for sealing the confidential version of Petitioner's Opposition to Patent Owners' Motion for Additional Discovery because it contains confidential business information that is unknown to the public, such as descriptions and excerpts from Petitioner's competitive strategy documents and email communications reflecting the same. Indeed, the Board has already authorized the parties to submit a joint protective order for the Board's consideration covering this type of confidential information, which was similarly designated when produced in the underlying district court litigation. In this regard, failing to seal the confidential version of the Petitioner's Opposition to Patent Owners' Motion for Additional Discovery would frustrate the purpose of sealing the confidential evidence. Indeed, the sealing of confidential information in Petitioner's Opposition to Patent Owners' Motion for Additional Discovery would ensure that information designated throughout the proceedings as confidential remains protected.

When the record of this proceeding is considered as a whole, the public would still have full access to the nature of the information and the conclusions reached

using the publicly available information. Such access should adequately fulfill the needs of the public to maintain a complete and understandable file history, while still protecting confidential and proprietary information. For these reasons, good cause exists for the Board to seal and protect Petitioner's Opposition to Patent Owners' Motion for Additional Discovery.

IV. Non-Confidential Version

As required by the Board's Trial Practice Guide, a non-confidential redacted version of the Petitioner's Opposition to Patent Owners' Motion for Additional Discovery is forthcoming. Petitioner will submit a redacted version of this Opposition after the relevant parties have had the opportunity to review following submission of the Opposition. The redactions will be limited in nature to the scope of the confidential information.

V. Certification of Non-Publication

On Petitioner's behalf, the undersigned counsel certifies that, to the best of its knowledge, the confidential information in the Petitioner's Opposition to Patent Owners' Motion for Additional Discovery has not been published or otherwise made public.

VI. Conclusion

For the above reasons, Petitioner respectfully requests that Petitioner's Opposition to Patent Owners' Motion for Additional Discovery be treated as confidential information, be placed under seal, and be maintained under the entered Protective Order as "Protective Order Material."

Respectfully submitted,

Dated: January 4, 2024

/David Conrad/

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(1) and 42.6(e)(4)(iii), the undersigned certifies that on January 4, 2024, a complete and entire copy of this Petitioner's Motion to Seal was provided by email to the Patent Owner by serving the email correspondence addresses of record as follows:

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