

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOM ENTERPRISES, LLC,
Petitioner,

v.

ELAINE AND REINHOLD W. VIETH,
Patent Owner.

IPR2023-00726
Patent 9,066,958 B2

Before JOHN G. NEW, SHERIDAN K. SNEDDEN, and
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

HARDMAN, *Administrative Patent Judge*.

ORDER
Granting Joint Motion to Enter Protective Order
37 C.F.R. § 42.54

The parties filed a Joint Motion for Entry of [Revised Proposed Stipulated] Protective Order. Paper 60 (“Mot.”); Ex. 2020 (“Proposed Protective Order”). The Proposed Protective Order, which appears in the record at Exhibit 2020,¹ seeks to modify the Board’s Default Protective Order by, among other things: (1) adding a designation of “Confidential – Attorneys’ Eyes Only” for “extremely sensitive confidential information;” (2) clarifying “the persons permitted to receive designated information and procedures for disclosure to such persons;” and (3) “permitting the use of designation previously made under a protective order entered in concurrent litigation.” Mot. 1–2; *see also* Ex. 2021 (redline comparison of Proposed Protective Order and the Board’s Default Protective Order).

As set forth in the Board’s Consolidated Trial Practice Guide, the Board generally will accept proposed modifications to the Board’s Default Protective Order, if the modifications are consistent with the integrity and efficient administration of the proceeding. *See* Trial Practice Guide,² 115. The Trial Practice Guide specifically provides that parties may propose additional tiers or categories of confidential information, such as “Attorneys’ Eyes Only.” *Id.* The Board, however, will not accept overly inclusive

¹ The motion indicates that the Proposed Protective Order appears in the record as Exhibit 2019. *See* Mot. 1. We understand this exhibit number to be a typographical error, with the intended Proposed Protective Order appearing at Exhibit 2020.

² Patent Trial and Appeal Board Consolidated Trial Practice Guide (November 2019), *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

definitions that encourage the parties to categorize all or most of their discovery materials as “Attorneys’ Eyes Only.” *Id.* at 115–16.

The Proposed Protective Order reasonably limits the “Confidential – Attorneys’ Eyes Only” designation to “extremely sensitive Confidential Information the disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means,” and requires that a party mark information with this designation “only upon a good faith belief that the information is so commercially sensitive that its dissemination deserves even further limitation than information designated as ‘Confidential.’” *See* Ex. 2020 ¶¶ 1, 4. Additionally, the proposed marking procedures appear designed to protect information designated under the protective order, and the other proposed modifications to the Board’s Default Protective Order appear to be consistent with the integrity and efficient administration of the proceeding.

Accordingly, for the above reasons, we enter the Proposed Protective Order (Exhibit 2020).

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Proposed Protective Order filed as Exhibit 2020 is entered in this proceeding and shall govern the conduct of this proceeding.

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