

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MOM ENTERPRISES, LLC,  
Petitioner,

v.

ELAINE AND REINHOLD W. VIETH,  
Patent Owners

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Case IPR2023-00726  
Patent 9,066,958 B2

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**MOTION TO SEAL PETITIONER'S REPLY  
TO PATENT OWNERS' RESPONSE**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner MOM Enterprises, LLC (“MOM” or “Petitioner”), respectfully requests the Board to authorize the filing under seal of certain filings in this case, including Petitioner’s Reply and Exhibits 1026, 1027, 1036, 1037, 1038, and 1039, filed with Petitioner’s Reply on April 12, 2024.

The Board granted entry of the Parties’ Proposed Protective Order on April 3, 2024. Paper 72. Thus, the Protective Order, which appears in the record as Exhibit 2020 governs the handling of confidential information 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 the Petitioner’s Reply and selected exhibits filed therewith. *See, e.g., Telebrands Corp. v. Tinnus Enterprises, LLC*, No. PGR2015-00018, Decision on Motion to Seal (Paper 41) at 2 (Good cause to seal is warranted when documents “contain ‘sensitive business information’ or discuss other exhibits that contain sensitive information.”); *see also Wright Medical Technology, Inc. v. Biomedical Enterprises, Inc.*, IPR2015-00786, Decision on Motion to Seal (Paper

37) at 2 (The Board granted motion to seal on documents containing “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.”). Furthermore, public disclosure of Petitioner’s Reply has the potential to significantly harm Petitioner’s competitive positions because it would allow competitors to access highly sensitive business information regarding research & development, manufacturing processes, and process information, as explained in more detail below with respect to the specific exhibits cited and described in Petitioner’s Reply.

Petitioner notes that Exhibits 1026 and 1027 referenced below were produced by the Parties in a related district court litigation (*Ddrops Company, Reinhold Vieth, and Elaine Vieth v. MOM Enterprises, LLC d/b/a Mommy’s Bliss*, D. Del., Case No. 1:22-cv-00332-GBW) and are designated as Confidential-Attorneys’ Eyes Only in their entirety under the protective order in the related district court case. 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.*, No. IPR2020-01556, Decision on Motion to Seal and Enter Protective Order (Paper 12) at 3.

MOM's positions with respect to the harm associated with the public disclosure of Exhibits 1026, 1027, 1036, 1037, 1038, and 1039 are set forth below:

- Exhibit 1026: This document is an internal MOM document that shows the draft art that was being proposed for MOM's probiotic product. MOM does not make its art for packaging its upcoming products available to the public in order to prevent MOM's competitors from unfairly competing against MOM. MOM relies on this document to support its arguments pertaining to obviousness and in response to patent owners' arguments pertaining to secondary considerations.
- Exhibit 1027: This document is the technical specification for Mommy Bliss's Baby Vitamin D Organic Drops, which is dated October 7, 2021. This document lists details about the ingredients, formula, shelf life, quality control standards, microbiological standards, processing instructions, manufacturing instructions, packaging, and batch information for MOM's current baby vitamin D product. MOM does not make these details available to the public because they would allow MOM's competitors to understand MOM's internal strategies and products and to unfairly compete against MOM. MOM relies on this document to support its arguments pertaining to obviousness and in

response to Patent Owners' arguments pertaining to secondary considerations.

- Exhibit 1036: This document is the deposition transcript of Patent Owners' declarant, Dr. Paul Horowitz. Patent Owners have marked this transcript Confidential-Attorneys' Eyes only.
- Exhibit 1037: This document is the deposition transcript of Patent Owners' declarant, Dr. Steven Reid. Patent Owners have marked this transcript Confidential-Attorneys' Eyes only.
- Exhibit 1038: This document is the deposition transcript of Patent Owners' declarant, Chris Temovsky. Patent Owners have marked this transcript Confidential-Attorneys' Eyes only.
- Exhibit 1039: This document is the deposition transcript of Patent Owners' declarant, Dr. Reinhold Vieth. Patent Owners have marked this transcript Confidential-Attorneys' Eyes only.

For these reasons, Petitioner has designated the Confidential Materials as "Confidential-Attorneys' Eyes Only" under the Protective Order.

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

Date: April 12, 2024

/ David Conrad /

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**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. §§42.6(e), the undersigned certifies that on April 12, 2024, a complete and entire copy of this Motion to Seal Petitioner's Reply to Patent Owners' Response was provided via email to the Patent Owners by serving the correspondence email address of record as follows:

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