

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOM Enterprises, LLC,
Petitioner,

v.

ELAINE AND REINHOLD W. VIETH,
Patent Owners,

Case IPR 2023-00726
Patent 9,066,958

**PATENT OWNERS' MOTION TO SEAL
UNDER 37 CFR § 42.54**

Pursuant to the REVISED PROPOSED STIPULATED PROTECTIVE ORDER entered in this IPR Patent Owners hereby Move to Seal information designated under the Protective Order in this Proceeding by Patent Owners or their licensee Ddrops Company ("Ddrops").

The Board entered an order granting the parties' proposed protective order on April 3, 2024, Paper 72.

PETITIONER'S REPLY TO PATENT OWNERS' RESPONSE, Paper 74 was filed on April 12, 2024, along with REDACTED PETITIONER'S REPLY TO PATENT OWNERS' RESPONSE, Paper 75, Exhibit 1038 - Deposition Transcript of Patent Owner Reinhold Vieth, Exhibit 1039 - Deposition Transcript of Chris Temovsky, and a MOTION TO SEAL PATENT OWNERS' RESPONSE.

PETITIONER'S REPLY TO PATENT OWNERS' RESPONSE, Paper 74, Exhibit 1038 - Deposition Transcript of Patent Owner Reinhold Vieth, Exhibit 1039 - Deposition Transcript of Chris Temovsky, and Exhibit 2083 Temovsky Confidential Errata, filed May 12, 2024, all contain information designated by Patent Owners under the provisions of the Protective Order entered in this proceeding.

In addition, PATENT OWNERS' SUR-REPLY, Paper 91, filed herewith contains information designated by the Parties under the provisions of the Protective Order entered in this proceeding.

The Board recognizes a strong public policy interest in making information filed in a quasi-judicial administrative proceeding open to the public, especially in an inter partes review that determines the patentability of claims in an issued patent and therefore affects the rights of the public. *See Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34 at 1-2 (PTAB Mar. 14, 2013). Under 35 U.S.C. §316(a)(1), the default rule is that all papers filed in an inter partes review are open and available for access by the public.

“The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information.” 37 C.F.R. §42.54(a); *see also* PTAB Consolidated Trial Practice Guide (“TPG”), 19-20. The TPG requires that parties “identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” TPG, 19.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. §42.54(a). That standard includes a showing that

- (1) the information sought to be sealed is truly confidential,
- (2) a concrete harm would result upon public disclosure,

(3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and

(4) on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

See Argentum Pharms. LLC v. Alcon Research, Ltd., IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative), 3-4. The moving party has the burden of proof in showing it is entitled to the requested relief. See 37 C.F.R. §42.20(c). Good cause is present for each of the documents sought to be sealed.

Patent Owners hereby move to seal PETITIONER'S REPLY TO PATENT OWNERS' RESPONSE, Paper 74; Exhibit 1038 - Deposition Transcript of Patent Owner Reinhold Vieth; Exhibit 1039 - Deposition Transcript of Chris Temovsky; and Exhibit 2083 Temovsky Confidential Errata, filed May 12, 2024, for good cause as follows:

1. PETITIONER'S REPLY TO PATENT OWNERS' RESPONSE, Paper 74

A redacted version of Paper 74 was filed by Petitioner as Paper 75. The following redactions have been made:

Page 4 – The redacted information relates to entries in the inventor's notebook and shows confidential research and development information of the type authorized to be protected as set out in the Trial Practice Guide. The development

and invention of the subject matter of the '958 patent is pertinent to issues in dispute in this proceeding and Patent Owners' interest in maintaining confidentiality outweighs any public interest in having this confidential information published in this proceeding. The Patent Owners have no control over the Petitioner's inclusion of the designated information in the Petitioner's Reply.

Pages 26 – Ddrops' confidential market share information has been redacted. This information sought to be sealed is truly confidential and there is no strong public interest requiring disclosure of such information. The Patent Owners have no control over the Petitioner's inclusion of the designated information in the Petitioner's Reply.

2. Exhibit 1038 – Temovsky Deposition Transcript and Exhibit 2083 -
Temovsky Confidential Errata

A non-confidential version of Exhibit 1038 is filed herewith as Exhibit 2089 and a non-confidential version of Exhibit 2083 is filed herewith as Exhibit 2091.

Portions of Exhibits 1038 and 2083 reflect highly sensitive confidential information of Ddrops, the licensee of Patent Owners in this proceeding. The highly sensitive confidential information is redacted from Exhibit 2089, the non-confidential version of Ex 1038, and from Exhibit 2091, the non-confidential version of Exhibit 2083. Such information includes market share data (Ex 1038, pages 70-75, 133, and 138) and trade secret information (Ex 1038, pages 24-25 and

Ex 2091, page 1), the disclosure of which would be detrimental to Ddrops' business and is prohibited by contractual provisions restricting disclosure and use of the market share information imposed by the vendor of the information. The redacted information includes confidential business information relating to payments by Ddrops to the Patent Owners, the publication of which would be harmful, particularly if the information was known to its competitor, the Petitioner in this proceeding. The market share information is important to evidence of secondary considerations asserted by Patent Owners. The payment information was elicited by Petitioner during a deposition and its inclusion in the filing submitted by Petitioner is outside of the control of Patent Owners. Any public interest in the redacted information is outweighed by Patent Owners' interest in maintaining confidentiality of the redacted information as required by the terms of the settlement agreements.

3. Exhibit 1039 – Vieth Deposition Transcript

A non-confidential version of Exhibit 1039 is filed herewith as Exhibit 2090 having highly sensitive confidential information redacted from portions of pages 56-80. The redacted information reflects the confidential contents of the inventor's notebook and shows confidential research and development information of the type authorized to be protected as set out in the Trial Practice Guide. The development and invention of the subject matter of the '958 patent is pertinent to issues in

dispute in this proceeding and Patent Owners' interest in maintaining confidentiality outweighs any public interest in having this confidential information published in this proceeding.

4. Paper 91 - Patent Owner's Sur-Reply

A non-confidential version of Paper 91 is filed herewith as Paper 92 with designated portions redacted.

Portions of Paper 91 reflect highly sensitive confidential information of Ddrops, the licensee of Patent Owners in this proceeding. The highly sensitive confidential information is redacted from Paper 91. Such information is limited to market share data (Paper 91 pages 22-24) the disclosure of which would be detrimental to Ddrops' business and is prohibited by contractual provisions restricting disclosure and use of the market share information imposed by the vendor of the information. The market share information is important to evidence of secondary considerations asserted by Patent Owners. Any public interest in the redacted information is outweighed by the Patent Owners' interest in maintaining confidentiality of the redacted information as required by the terms of the settlement agreements.

In addition, pages 23 and 24 also include information designated by the Petitioner and are redacted pending a motion to seal by the Petitioner.

Certification

The undersigned, on behalf of Patent Owners, certifies that to the best of the Patent Owners' knowledge, the information sought to be sealed has not been published or otherwise made public.

Dated: May 15, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing Patent Owners' Motion to Seal is being served on May 15, 2024, by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) and by electronic mail as directed by Petition upon the following counsel of record for Petitioners:

David B. Conrad
Lance E. Wyatt
Sarika Patel
Casey Kraning
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/Mark E Ungerman/
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