

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 SHERIDAN K. SNEDDEN and CYNTHIA M. HARDMAN,
Administrative Patent Judges.

HARDMAN, *Administrative Patent Judge.*

ORDER

Granting-in-Part Petitioner's Motion to Seal (Paper 76)
37 C.F.R. §§ 42.14, 42.54

Petitioner filed a Motion to Seal portions of its Reply (filed at Paper 74¹) and Exhibits 1026, 1027, and 1036–1039. Paper 76, 1. Patent Owner did not file a response to the Motion.

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

Argentum Pharms. LLC v. Alcon Rsch., Ltd., IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative), 3–4.

We first address material Petitioner seeks to seal that contains Petitioner’s own confidential information. We then address the material that concerns Patent Owner’s information.

Exhibits 1026 and 1027

Exhibit 1026 contains “draft art that was being proposed for MOM’s probiotic product,” while Exhibit 1027 contains “the technical specification for Mommy Bliss’s Baby Vitamin D Organic Drops.” Mot. 3. Petitioner contends that sealing this information will prevent MOM’s competitors from unfairly competing against it. *Id.*

We find that the information in Exhibits 1026 and 1027 is the type of information that businesses typically keep confidential. Petitioner represents that this information has not been published or otherwise made public. *Id.* at 4. Accordingly, we find that Petitioner has established good cause to seal

¹ Petitioner filed a redacted version of its Reply at Paper 75.

Exhibits 1026 and 1027, and grant Petitioner's request to seal these materials pursuant to the Protective Order entered in this proceeding (Ex. 2020).

Petitioner's Reply and Exhibits 1036–1039

Petitioner asserts that “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.” Mot. 2. This assertion appears to be incorrect, because the material Petitioner seeks to seal in its Reply appears to concern Patent Owner's information, not Petitioner's. *Id.* Specifically, at page 4 of the Reply, Petitioner seeks to seal a statement quoting from and characterizing information in Dr. Vieth's lab notebook. Second, at page 26, Petitioner seeks to seal three statements relating to market share for Ddrops, which is a commercial product sold by Patent Owner's licensee. The Motion does not address the alleged confidentiality of this material.

Petitioner's Motion also does not address the alleged confidentiality of the material in Exhibits 1036–1039. According to Petitioner, these documents are the deposition transcripts of Patent Owner's declarants (Dr. Horowitz, Dr. Reid, Mr. Temovsky, and Dr. Vieth), and Patent Owner is the party that marked these materials as Attorneys' Eyes Only pursuant to the Protective Order.

Because Petitioner has not established good cause to seal the redacted portion of Petitioner's Reply or any portion of Exhibits 1036–1039, we deny Petitioner's request to seal these materials. We note, however, that Patent Owner has subsequently filed a motion to seal some of these materials

(Paper 93); accordingly, we will further address those materials in an order directed to Patent Owner's motion.

Notice

We remind the parties that confidential information that is subject to a protective order ordinarily becomes public 45 days after final judgment² in a trial. *See Consolidated Office Trial Practice Guide*,³ 21–22. There is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial. *Id.* at 22. A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public. *Id.*; 37 C.F.R. § 42.56.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Motion to Seal is granted in part, to the extent that we seal Exhibits 1026 and 1027, but deny Petitioner's request to seal its Reply and Exhibits 1036–1039;

ORDERED that Petitioner's Reply and Exhibits 1036–1039 shall remain sealed pending the Board's resolution of Patent Owner's separate motion to seal (Paper 93).

² For present purposes, the panel interprets “final judgment” in 37 C.F.R. § 42.56 to include the resolution of appellate proceedings, if any.

³ *Available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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