

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 Patent Owner's Renewed Motion to Seal (Paper 83)
37 C.F.R. §§ 42.14, 42.54

Patent Owner filed a Renewed Motion to Seal portions of its Patent Owner Response (filed at Paper 61), Exhibit 2068 (Vieth Declaration), Exhibit 2071 (Temovsky Declaration), and Exhibit 2072 (Reid Declaration). Paper 83, 2. Petitioner 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). 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.

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

We address the materials in turn below.

Vieth and Temovsky Declarations (Exs. 2068, 2071)

Patent Owner asserts that the information sought to be sealed in the Vieth and Temovsky Declarations is confidential to it or its licensee, Ddrops Company. Mot. 4–5. According to Patent Owner, the information includes confidential research and development information, terms of settlement agreements, technical product information, and market share information. *See id.* Patent Owner contends that publication of the information to competitors would be harmful. *See id.* at 5.

We find that the information Patent Owner requests to seal in the Vieth and Temovsky Declarations is the type of information that businesses typically keep confidential. Patent Owner represents that this information has not been published or otherwise made public. *See id.* at 6. Redacted

copies of the Vieth Declaration (Ex. 2068) and Temovsky Declaration (Ex. 2071) appear in the record as Exhibits 2078 and 2079, respectively.

For the above reasons, we find that Patent Owner has established good cause to seal the requested portions of the Vieth and Temovsky Declarations, and grant Patent Owner's request to seal these materials pursuant to the Protective Order entered in this proceeding (Ex. 2020).

Reid Declaration (Ex. 2072)

Patent Owner asserts that the information sought to be sealed in the Reid Declaration is confidential to its licensee, Ddrops Company, including market share data and trade secret information. Mot. 5–6. Patent Owner contends that publication of the information to competitors would be detrimental to Ddrops' business and is prohibited by contractual provisions. *See id.* at 6.

We find that the information Patent Owner requests to seal in the Reid Declaration is the type of information that businesses typically keep confidential. Patent Owner represents that this information has not been published or otherwise made public. *Id.* Patent Owner filed a redacted version of the Reid Declaration as Exhibit 2080.¹ *Id.*

¹ Patent Owner's redacted version of the Reid Declaration purports to "include[] certain information designated by the Petitioner" as confidential." Mot. 6. Petitioner concurrently moved to seal portions of the Reid Declaration (see Paper 85), and filed its own redacted version of this Declaration, as Exhibit 1051. For clarity of the record, we note that Exhibit 1051 contains fewer redactions to Petitioner's confidential information than Patent Owner's redacted version of the Reid Declaration.

We find that Patent Owner has established good cause to seal the requested portions of the Reid Declaration, and grant Patent Owner's request to seal this Declaration.

Patent Owner Response (Paper 61)

Regarding Patent Owner's request to seal portions of the Patent Owner Response (Paper 61), Petitioner filed a redacted version as Paper 87, while Patent Owner filed a redacted version as Paper 84. The parties' proposed redactions conflict, in that some material Petitioner seeks to redact is public in Paper 84, while some material Patent Owner seeks to redact is public in Paper 87. The parties are ordered to meet and confer, and to the extent a party seeks to seal any portion of the Patent Owner Response (Paper 61), within 10 business days of this order, the party shall file an appropriate motion to seal, together with a revised version of the document with appropriate proposed redactions. If both parties desire to seal portions of the document, they shall file an appropriate joint motion to seal (each specifying and justifying the particular material they seek to seal), together with a single revised version of the document with all proposed redactions.

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

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>.

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 Patent Owner's Motion to Seal is *granted-in-part*, in that we grant Patent Owner's request to seal Exhibits 2068, 2071, and 2072, but deny Patent Owner's request to seal the Patent Owner Response (Paper 61); and

FURTHER ORDERED THAT the parties shall meet and confer regarding redactions to the Patent Owner Response (Paper 61), and shall file any renewed motion to seal this document within 10 business days of this order, as set forth above.

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