

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 85)
37 C.F.R. §§ 42.14, 42.54

Petitioner filed a Motion to Seal portions of Patent Owners' Motion for Additional Discovery (Paper 49), Petitioner's Opposition to Patent Owners' Motion for Additional Discovery (Paper 52), Patent Owners' Response (Paper 61), Exhibits 2022, 2026, 2027, 2042–2047, 2049–2058, 2060, 2062–2067, and 2072, and corrected Exhibits 2051, 2064, and 2065. Paper 85, 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). 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.

Petitioner requests to seal the entirety of Exhibits 2022, 2042–2047, 2049–2058, 2060, 2062–2067, and corrected Exhibits 2051, 2064, and 2065.¹ Petitioner seeks to seal portions of the remaining materials, and has

¹ There are multiple copies of Exhibits 2051, 2064, and 2065 in the record; the rulings herein apply equally to all versions of these exhibits. For clarity of the record, we explain why multiple copies of these exhibits are in the record. Patent Owner originally filed these exhibits on February 9, 2024, but they were mislabeled (with incorrect exhibit numbers). The panel authorized Patent Owner to file corrected versions of the exhibits (*see* Exhibit 3007), and Patent Owner did so by attaching them to Paper 64. The panel subsequently requested that Patent Owner instead file the corrected exhibits as exhibits (not as part of a paper), so that the Board could expunge the original versions, leaving the corrected versions as the only versions in the record. *See* Paper 73, 1 n.1. On May 12, 2024, Patent Owner filed the corrected exhibits as exhibits, but gave them new exhibit numbers (i.e.,

filed redacted copies of these materials, as follows:

- (1) Exhibit 2026 (Kaderali deposition transcript) – redacted version filed as Exhibit 1049;
- (2) Exhibit 2027 (Medina deposition transcript) – redacted version filed as Exhibit 1050;
- (3) Exhibit 2072 (Reid Decl.) – redacted version filed as Exhibit 1051²;
- (4) Petitioner’s Opposition to Patent Owners’ Motion for Additional Discovery (Paper 52) – redacted version filed as Paper 51;
- (5) Patent Owner’s Motion for Additional Discovery (Paper 49) – redacted version filed as Paper 86³; and
- (6) Patent Owner Response (Paper 61) – redacted version filed as Paper 87.⁴

Patent Owner filed corrected Exhibit 2051 as Exhibit 2086, corrected Exhibit 2064 as Exhibit 2087, and corrected Exhibit 2065 as Exhibit 2088). To prevent confusion and to allow facile location of these exhibits, the panel will not expunge any version of these exhibits at this time.

² Patent Owner also filed a redacted version of the Reid Declaration, as Exhibit 2080. *See also* Paper 83 (Patent Owner’s motion to seal portions of the Reid Declaration). 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 (Exhibit 2080).

³ Patent Owner previously filed a redacted version of Patent Owner’s Motion for Additional Discovery (Paper 49), as an appendix to Paper 48. *See* Mot. 20. Petitioner’s redacted version (Paper 86) and Patent Owner’s redacted version (appendix to Paper 48) are identical.

⁴ Patent Owner filed its own redacted version of the Patent Owner Response as Paper 84.

Petitioner certifies that the information sought to be sealed has not, to its knowledge, been published or otherwise made public. Mot. 22.

With the exception of items (5) and (6) listed above, we find that Petitioner has established good cause to seal the requested information, for the reasons Petitioner explains in its motion. Accordingly, we grant Petitioner's request to seal as to all of the requested information, except as to items (5) and (6). 37 C.F.R. § 42.14.

Regarding Petitioner's request to seal item (5) (Patent Owner's Motion for Additional Discovery (Paper 49)), some of the material Petitioner seeks to seal appears to have been published or otherwise made public. Petitioner shall reevaluate its proposed redactions in light of other information that is publicly available on the docket, such as in the proposed redacted documents Petitioner filed at Paper 87 and in Exhibit 1049. If Petitioner renews its request to seal any portion of Patent Owner's Motion for Additional Discovery (Paper 49), within 10 business days of this order, it shall file an appropriate motion to seal, together with a version of the document with appropriate proposed redactions. Alternatively, if Petitioner no longer seeks redactions to Patent Owner's Motion for Additional Discovery (Paper 49), it shall inform the Board via email, so that the Board may unseal Paper 49.

Regarding Petitioner's request to seal item (6) (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 judgment⁵ in a trial. *See Consolidated Office Trial Practice Guide*,⁶ 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*, in that we grant Petitioner’s request to seal as to all of the requested material,

⁵ For present purposes, the panel interprets “final judgment” in 37 C.F.R. § 42.56 to include the resolution of appellate proceedings, if any.

⁶ *Available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

except as to Patent Owner's Motion for Additional Discovery (Paper 49) and the Patent Owner Response (Paper 61);

FURTHER ORDERED THAT Petitioner shall reevaluate its proposed redactions to Patent Owner's Motion for Additional Discovery (Paper 49), and shall file any renewed motion to seal within 10 business days of this order, as set forth above; 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 within 10 business days of this order, as set forth above.

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