

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 IPR2023-00726
Patent 9,066,958 B2

JOINT RENEWED MOTION TO SEAL PATENT OWNER RESPONSE

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner MOM Enterprises, LLC (“MOM” or “Petitioner”) and Patent Owners Elaine and Reinhold W. Vieth (“Patent Owners”), respectfully jointly move to seal Patent Owners’ Response (Paper No. 61) containing Petitioner’s, Patent Owners’, and Patent Owners’ licensee Ddrops Company’s (“Ddrops”) confidential information.

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.

Patent Owners have filed two Motions to Seal Patent Owners’ Response. Papers 62, 83. Petitioner previously filed a Motion to Seal Patent Owners’ Response. Paper 85. On April 3, 2024, the Board entered an Order Denying Without Prejudice Patent Owners’ first Motion to Seal. Paper 73. On June 12, the Board entered an Order Granting-in-Part Patent Owners’ Renewed Motion to Seal, (Paper 101) and an Order Granting-in-Part Petitioner’s Motion to Seal, (Paper 102). In both Orders, the Board noted that Patent Owner and Petitioner filed separate redacted versions of the Patent Owners’ Response with conflicting redactions (i.e. Papers 84, 87). Paper 101, 4; Paper 102, 4-5. The Board ordered the parties to meet and confer and file a joint motion to seal together with a single revised version of Patent Owners’ Response with all proposed redactions. Paper 101, 4; Paper 102, 5. Accordingly, the parties have met and conferred and file this renewed joint motion with a single

revised version of Patent Owners' Response with proposed redactions that contain only the redactions jointly identified in Papers 84 and 87.

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 Patent Owners' Response. *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 the redacted information in Patent Owners' Response has the potential to significantly harm both parties' 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.

MOM notes that Exhibits 2042-2047, 2049-2058, 2060, 2062, 2063, and 2067, as well as Corrected Exhibit 2051, 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.

The parties jointly move to seal Patent Owners' Response. The parties are concurrently filing a separate redacted version of this document (Paper No. 108). Petitioner moves to seal because Patent Owners' Response discloses confidential MOM information relating to the formulation development, marketing strategy, and sales and volume information relating to MOM's commercial product, including through reference to sealed Exhibits. 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. Petitioner's redactions are limited to the minimum amount necessary to protect MOM's confidential information. Petitioner's redactions are on Pages 48, 52, and 63 (with the exception of the sentence in the second paragraph that starts "At the fourth quarter of 2020," which is Patent Owners' redaction). Petitioner affirms that its redactions are limited to the minimum amount necessary to protect MOM's confidential information.

Patent Owners have made the following redactions: Pages 53 and 54 – the terms of confidential settlement agreements between Patent Owners and the defendants in prior patent infringement actions have been redacted. Pages 62-64 – 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 need to rely on the redacted information as evidence of secondary considerations.

Thus, the parties have shown 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.” Paper No. 73, 5 (quoting *Argentum Pharms. LLC*, IPR2017-01053, Paper 27, at 3-4).

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: June 25, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§42.6(e), the undersigned certifies that on June 25, 2024, a complete and entire copy of the Joint Renewed Motion to Seal 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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