UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT TRIAL AND APPEAL BOARD

First Alert, Inc. and BRK Brands Inc.,
Petitioners

v.

Walter Kidde Portable Equipment, Inc.,
Patent Owner

CASE: IPR2023-00898
U.S. PATENT NO. 7,525,445

PETITIONERS' MOTION TO SEAL EXHIBIT 1027

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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TABLE OF CONTENTS

I. RELIEF REQUESTED 1
II. GOOD CAUSE EXISTS FOR SEALING THE IDENTIFIED CONFIDENTIAL INFORMATION 1
III. PROPOSED PROTECTIVE ORDER 3
IV. CERTIFICATION OF NON-PUBLICATION 4
V. CONCLUSION 4

LIST OF EXHIBITS

Exhibit No.	Description
1001	U.S. Patent No. 7,525,445 ("the '445 Patent")
1002	Declaration of John D. Pratt, Ph.D.
1003	CV of John D. Pratt, Ph.D.
1004	File History of U.S. Patent No. 7,123,158
1005	U.S. Patent No. 5,578,996 to Watson et al. ("Watson")
1006	U.S. Patent No. 6,160,487 to DeLuca ("DeLuca '487")
1007	U.S. Patent No. 6,433,700 to Malewski ("Malewski")
1008	Report of the Meeting of the Standards Technical Panel of UL for Smoke Detectors, March 7, 2003 ("STP2003")
1009	European Patent Application No. 1,045,354 to Byrne et al. ("Byrne '354")
1010	U.K. Patent No. 2,312,311 to Byrne ("Byrne '311")
1011	First Alert Smoke Detector with Ten-Year Non-Replaceable Batteries, Product No. SA10YR, User's Manual ("SA10YR Manual")
1012	Charles Reinholtz Declaration
1013	Charles Reinholtz Transcript (January 6, 2023)
1014	What is a Standards Technical Panel (UL LLC ©2015)
1015	STP Process Flowchart
1016	UL 217 Single and Multiple Station Smoke Alarms (5th Ed., dated Oct. 12, 2001)
1017	*Reserved*

Exhibit No.	Description
1018	Manual of Patent Examination Procedure § 2181
1019	Case No. 6:22-cv-00566-ADA-DTG, Claim Construction Order (Dkt. 65)
1020	Case No. 6:22-cv-00566-ADA-DTG, Joint Claim Construction Statement (Dkt. 52)
1021	Case No. 6:22-cv-00566-ADA-DTG, Scheduling Order (Dkt. 25)
1022	Docket Navigator Statistics, Judge Alan D. Albright
1023	Case No. AU:21-cv-00896-ADA, *Fintiv, Inc. v. Apple Inc. et al.*, Order Setting Jury Selection and Trial (Dkt. 423)
1024	File History of the ’445 Patent
1025	Deposition Transcript of Thomas Kondziolka, May 10, 2023
1026	Plaintiff Walter Kidde Portable Equipment Inc.’s First Amended Initial Disclosures (Mar. 6, 2023)
1027	Transcript from November 16, 2022 deposition of Larry Ratzlaff (Confidential)
1028	NFPA Journal, Volume 092 Issue 02 (March/April 1998)
1029	“Smoke alarms, fire deaths, and randomized controlled trials” (Guest Editorial), Roberts & Diguiseppi, *Injury Prevention* 1999, 5:244
1030	1999 NFPA 72
1031	2000 International Fire Code Chapter 9
1032	UL 217 Single and Multiple Station Smoke Alarms (5th Ed., dated Feb. 21, 1997)
1033	U.S. Patent No. 4,315,594 (“Niederost”)

Exhibit No.	Description
1034	WO 97/05586 ("Bayley")
1035	*Reserved*
1036	U.S. Patent No. 4,870,395 to Belano ("Belano")
1037	U.S. Patent No. 5,191,855 to Conforti ("Conforti")
1038	NFPA Journal, Volume 093 Issue 01 (January/February 1999)
1039	NFPA Journal, Volume 093 Issue 03 (May/June 1999)
1040	U.S. Patent No. 5,444,434
1041	U.S. Patent No. 5,793,295
1042	Low Capacity Lever Activation Switches – Goldhamer Inc., 1939
1043	Declaration of Mark A. Devine
1044	Plaintiff Walter Kidde Portable Equipment Inc.'s Amended Answer to Defendants First Alert, Inc. and BRK Brands, Inc.'s Counterclaims, dated May 30, 2023
1045	Protective Order

Petitioners First Alert, Inc. and BRK Brands, Inc. ("Petitioners") respectfully submit this Motion to Seal and for Entry of a Stipulated Protective Order.

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, and for the reasons set forth below, Petitioners hereby move for leave to file under seal Exhibit 1027 filed in connection with its Petition.

Petitioners further request entry of the Proposed Default Protective Order as set forth in Appendix B of the Consolidated Trial Practice Guide. A copy of the Default Protective Order has been submitted as Exhibit 1045.

II. GOOD CAUSE EXISTS FOR SEALING THE IDENTIFIED CONFIDENTIAL INFORMATION

Documents filed with the Patent Trial and Appeal Board (the "Board") are generally available to the public. *See* 37 C.F.R. §§ 42.14, 42.412. For good cause, however, the Board may protect confidential information from public disclosure. *See* 37 C.F.R §§ 42.14, 42.54; *see also, e.g.*, *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 36 at 3-4 (PTAB Mar 14, 2013). In particular, the Board will protect confidential information but will first "need to know why the information sought to be sealed constitutes confidential information." *Id.* at 4. The Board will then "balance between the public's interest in maintaining a complete

and understandable file history and the parties' interest in protecting truly sensitive information." *Id.* at 2, 8.

Here, Exhibit 1027 contains deposition testimony from the co-pending litigation that Patent Owner Walter Kidde Portable Equipment, Inc. has designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," indicating that the deposition testimony contains or reflects highly sensitive business or personal information, the disclosure of which is likely to cause significant harm to an individual or to the business or competitive position of Patent Owner. Examples of such information include highly sensitive information relating to research, development, and certification of Patent Owner's products, including Patent Owner's confidential responses to interrogatories served in the co-pending litigation. Patent Owner's interest in protecting its confidential business information outweighs the public's interest in viewing that information. *See Garmin*, Paper 36 at 9 (finding that the public's interest in having access to a party's confidential business information, not related to patent validity, is "minimal").

In its Petition, Petitioners cited this deposition transcript in only one section and by exhibit number only. In doing so, Petitioners have not recited any confidential information into the Petition. As a result, the Petition is free of any confidential information and has been filed publicly. Petitioners' motion is therefore limited to Exhibit 1027. Because this Exhibit contains Patent Owner's confidential business

information and Patent Owner's interest in protecting such information outweighs the public's interest in viewing this particular testimony, based on Patent Owner's designation there is good cause to seal Exhibit 1027.

III. PROPOSED PROTECTIVE ORDER

Pursuant to 37 C.F.R. § 42.54, Petitioners request that the default protective order found in Appendix B of the Trial Practice Guide be entered. Petitioners have not consulted with Patent Owner regarding the terms of the default protective order. Good cause exists to enter the proposed protective order for the following reasons.

First, the default protective order permits disclosing confidential information only to a select few individuals within the organization of the Parties. For additional individuals who do not fall within the specific groups described in Sections (2)(A)-(E), the Parties retain a right to oppose disclosure via the procedure outlined in Section (3).

Second, confidential information is to be retained in a secure manner, such that confidential information disclosed to the select individuals described above is likely to remain confidential.

Finally, the proposed Protective Order does not restrict access to confidential information for employees and representatives of the Patent and Trademark Office who have a need for access to any confidential information exchanged in this proceeding.

IV. CERTIFICATION OF NON-PUBLICATION

The undersigned counsel certifies the information sought to be sealed by this Motion to Seal has not, to their knowledge, been published or otherwise made public. The Petitioners and Patent Owner made efforts to maintain the confidentiality of this information in a related district court proceeding. In that district court proceeding, the deposition testimony that Petitioners presently move to seal was designated by Patent Owner as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to a Protective Order agreed upon by the Parties.

V. CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Board grant this Motion to Seal, and enter the default Protective Order.

Date: June 2, 2023

Respectfully Submitted,

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Certification of Service Under 37 C.F.R. § 42.6(e)(4)

A copy of this Motion to Seal has been served at the following correspondence address of record for the subject patent via Federal Express Priority Overnight® on this 2nd day of June, 2023:

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