Paper No. 33
Filed: August 16, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAYER CROPSCIENCE LP, MONSANTO COMPANY, AND
INARI AGRICULTURE, INC.
Petitioner,

v.

CORTEVA AGRISCIENCE LLC,
Patent Owner.

IPR2023-01037[1]
Patent 11,149,283

PATENT OWNER'S THIRD UNOPPOSED MOTION TO SEAL

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[1] The Board joined Inari Agriculture, Inc. as a party (Petitioner) to this proceeding via a Motion for Joinder in IPR2024-00180.

I. Introduction

Patent Owner Corteva Agriscience LLC requests that the confidential version of Exhibit 2066 (Dr. Hausinger's Deposition Transcript (Aug. 1, 2024)) be sealed under 37 C.F.R. § 42.54. Good cause to seal exists because (i) a public, redacted version of Exhibit 2066 has also been filed, and (ii) the redacted portions of Exhibit 2066 quote, discuss, and/or refer to confidential information in previously sealed Exhibit 2004, which reflect Patent Owner's proprietary protein research information that is not publicly available.

The Board previously entered the parties' agreed-upon Protective Order and granted Patent Owner's motion to seal such confidential information in Exhibit 2004. *See* Paper 16; Paper 7. Here, the same reasons support granting Patent Owner's third motion to seal. *See id.* In response to Patent Owner's inquiry, counsel for Petitioner confirmed that Petitioner does not oppose this motion.

II. Governing Rules and PTAB Guidance

Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public, but a party may file a concurrent motion to seal and the information at issue shall be sealed pending the outcome of the motion.

Similarly, 37 C.F.R. § 42.14 provides:

> The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

It is, however, only "confidential information" that is protected from disclosure. 35 U.S.C. § 316(a)(7) ("The Director shall prescribe regulations -- . . . providing for protective orders governing the exchange and submission of confidential information"). In that regard, the *Office Trial Practice Guide*, 77 *Fed. Reg.* 48756, 48760 (Aug. 14, 2012) provides:

> The rules aim to 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.
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> * * *
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> *Confidential Information*: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. § 42.54.

III. Identification of Confidential Information

The confidential information consists of Patent Owner's proprietary protein research information that is not publicly available. This information is contained in the following document:

- Exhibit 2066 on pages 73-76.

IV. Good Cause Exists for Sealing the Confidential Information

The Board's rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012) ("The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information."). Here, the confidential information that Patent Owner seeks to seal pertains to proprietary protein research information that is not publicly available.

The Board has found good cause to seal proprietary scientific research information under similar circumstances and should find the same here. For example, in *Inari Agriculture, Inc. v. Corteva Agriscience LLC*, the Board found good cause to grant motions to seal documents regarding "proprietary protein research information." PGR2023-00022, Paper 22 at 3-4 (PTAB February 5, 2024);

see also PGR2023-00022, Paper 29 at 2-3 (PTAB May 9, 2024). Similarly, in *Illumina, Inc. v. Cornell Research Foundation, Inc.*, the Board found good cause to grant a patent owner's motion to seal a document containing non-public research data. IPR2016-00549, Paper 20 at 4-6 (PTAB May 26, 2017); *see also* IPR2016-00553, Paper 21 at 4-6 (PTAB May 26, 2017); IPR2016-00557, Paper 52 at 4-6 (PTAB May 26, 2017); IPR2016-00559, Paper 21 at 4-6 (PTAB May 26, 2017). The Board also found good cause to seal portions of a declaration and the Patent Owner's Response that cited such non-public data. IPR2016-00549, Paper 20 at 4-6 (PTAB May 26, 2017). In *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, the Board similarly found good cause to grant a patent owner's motion to seal copies of documents that contained "proprietary technical and product development information," as well as declarations and papers discussing that confidential information. IPR2013-00517, Paper 83 at 4-5 (PTAB Jan. 29, 2015).

Here, the confidential information quoted, discussed, and/or referred to in Exhibit 2066 is the content from the already sealed Exhibit 2004, which is confidential information reflecting Patent Owner's non-public protein sequences. Exhibit 2066 at 73-76. Patent Owner has maintained Exhibit 2004 and the information it contains as confidential and proprietary. If such non-public research data is made public, it would create a competitive disadvantage for Patent Owner.

Accordingly, there is good cause to grant this third motion to seal.

V. Proposed Protective Order

On January 8, 2024, the Board entered the parties' agreed-upon Protective Order that was attached as Appendix A to the first unopposed Motion to Seal (Paper 7). *See* Paper 16. This previously entered Protective Order will also govern the treatment of Exhibit 2066 and the confidential information therein.

VI. Conclusion

For the reasons set forth above, Patent Owner respectfully requests that the Board grant this third unopposed motion to seal.

Respectfully submitted,

Dated: August 16, 2024

/Pier D. DeRoo/
Pier D. DeRoo
Reg. No. 69,340

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Patent Owner's Third Unopposed Motion to Seal** was served electronically via email on August 16, 2024, in its entirety on the following:

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Petitioners have consented to service by email.

Dated: August 16, 2024

/Mark A. Rosenberger/
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