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Paper 46
Entered: January 27, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAYER CROPSCIENCE LP AND MONSANTO COMPANY, and
INARI AGRICULTURE, INC.
Petitioners,[1]

v.

CORTEVA AGRISCIENCE LLC,
Patent Owner.

IPR2023-01036 (Patent 10,947,555 B2)
IPR2023-01037 (Patent 11,149,283 B2)
IPR2023-01038 (Patent 11,299,745 B2)[2]

Before MICHAEL J. FITZPATRICK, ROBERT A. POLLOCK, and TIMOTHY G. MAJORS, *Administrative Patent Judges.*

MAJORS, *Administrative Patent Judge*.

ORDER
CONDUCT OF THE PROCEEDING
37 C.F.R. §§ 42.5, 42.54, 42.56

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[1] The Board joined Inari Agriculture, Inc. as a party (Petitioner) to these listed cases via a Motion for Joinder in IPR2024-00179, IPR2024-00180, and IPR2024-00181.

[2] This Order addresses issues that are the same in the listed cases. We exercise our discretion to enter one Order to be filed in each case. The parties are not authorized to use this style heading.

I. DISCUSSION

"[A]fter a final judgment in a trial, a party may file a motion to expunge confidential information from the record." *See* 37 C.F.R. 42.56. On December 17, 2024, the Board entered Final Written Decisions in the above listed proceedings. *See, e.g.*, IPR2023-01036, Paper 44; *see also* IPR2023-01036, Paper 46 (Public Version of Final Written Decision).[3] Those Final Written Decisions (and other evidence of record) include confidential information that is subject to orders to seal and a protective order entered in these proceedings. *See, e.g.*, Paper 46 (order granting various motions to seal); Paper 15 (entering protective order (available at Paper 6, App'x A)). Pursuant to the Trial Practice Guide, "[c]onfidential information that is subject to a protective order ordinarily would become public . . . 45 days after final judgment in a trial. 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." Consolidated Patent Trial Practice Guide at 21–22 (Nov. 2019), *available at* http://www.uspto.gov/TrialPracticeGuideConsolidated.

On January 21, 2025, Patent Owner wrote to the Board via email (Ex. 3006) with the following request:

> Patent Owner plans to appeal the Final Written Decisions in these proceedings. Because Federal Circuit Rule 17(a) states that "[t]he agency must retain the record" and requires that the Board maintain (rather than expunge) the record pending appeal, Patent Owner respectfully requests (i) that the current sealed record be maintained and (ii) authorization to file its motion to expunge

[3] For convenience, we cite only the papers entered in IPR2023-01036, but note that similar papers are filed in the related proceedings.

> confidential information in these proceedings (currently due January 31, 2025) at a later time: 45 days following the completion of all appeals and/or opportunities to appeal.

Id. Petitioner has not opposed this request.

Having considered Patent Owner's unopposed request, the Board finds that there is good cause to allow the request. Accordingly, the confidential information of record will remain sealed pending any appeal of the Board's Final Written Decisions. Either party may file a motion to expunge confidential information within 45 days following the completion of all appeals or the lapse of any applicable deadline for seeking such appeals. If no such motion to expunge is filed within this permitted extension, or absent any further order from the Board, any confidential information of record will be made public.

II. ORDER

ORDERED that Patent Owner's request that the current sealed record be maintained is *granted*;

FURTHER ORDERED that any motion to expunge confidential information from the record must be filed, if at all, within 45 days from the completion of all appeals (or the applicable lapse of time for filing such appeals); and

FURTHER ORDERED that if no motion to expunge confidential information is filed within the 45-day timeline provided immediately above, any confidential information of record will be unsealed and made public.

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