

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC,
Petitioner,

v.

NUHN INDUSTRIES LTD.,
Patent Owner.

IPR2023-01161
Patent 11,358,425 C1

Before MEREDITH C. PETRAVICK, MATTHEW S. MEYERS, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

DOUGAL, *Administrative Patent Judge*.

DECISION

Granting Motions to Seal and Entering Protective Order
37 C.F.R. §§ 42.5, 42.14, 42.54

I. Background

As discussed in more detail below, Patent Owner filed a Motion to Seal (Paper 17) and an Amended Motion to Seal (Paper 37). Petitioner filed an Opposition to the amended motion to seal (Paper 43), and then the parties filed a Joint Motion to Seal (Paper 50), essentially superseding the prior motions and opposition.

All of the motions request sealing of the Patent Owner Response and Exhibits 2055–2059, 2075–2078, and 2083. Papers 17, 37, 50¹. Petitioner does not and did not oppose this request. Paper 43, 1; Paper 50, 1.

The motions also request entry of a protective order. Papers 17, 37, 50. Petitioner previously opposed this request (Paper 43), but has now come to agreement with Patent Owner on a revised version of the protective order. Paper 50.

We first address the Motions to Seal, followed by the Motion to Enter a Protective Order.

II. Motions to Seal

Patent Owner requests sealing of the Patent Owner Response and Exhibits 2055–2059, 2075–2078, and 2083. Papers 17, 37, 50. Patent Owner filed sealed versions of the noted exhibits and a public version of Exhibit 2083. Patent Owner filed public (Paper 19) and sealed (Paper 20) versions of the Patent Owner Response, as well as a public (Paper 26) and sealed (Paper 27) versions of a Corrected Patent Owner Response. We understand both the Patent Owner Response and the Corrected Patent Owner Response to be covered by the Motions to Seal.

¹ The Joint Motion to Seal does not list all of the exhibits from the prior motions, which appears to be a typographical error.

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, all papers filed in an *inter partes* review are open and available for access by the public. A party, however, may file a motion to seal confidential information, and the information is sealed pending the outcome of the motion. 37 C.F.R. § 42.54. As set forth in the Board’s Consolidated Trial Practice Guide,² “[t]he 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.” TPG 19.

We have reviewed the documents Patent Owner seeks to seal, and we agree the documents contain confidential information, such as Patent Owner’s financial information, and business strategy. Paper 17, 2–3. Moreover, Patent Owner is sufficiently discrete in its request to seal these documents by submitting redacted copies of many of the documents. Patent Owner’s treatment of the confidential information effectively balances its commercial and legal interests against the Board’s strong public policy that favors making information filed in *inter partes* review proceedings open to the public.

Accordingly, we grant the Motions to Seal (Papers 17, 37, 50) as Patent Owner has shown good cause.

As a reminder, confidential information that is subject to a protective order ordinarily becomes public forty-five (45) days after final judgment in a

² USPTO, Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019, <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“TPG”).

trial.³ TPG 21–22. After final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public in accordance with 37 C.F.R. § 42.56.

III. Protective Order

The parties submitted a proposed protective order which they jointly propose entering.⁴ Paper 50, 1–2; Ex. 1036 (proposed protective order).

The parties have identified how the proposed protective order departs from the Board’s default protective order set forth in Appendix B of the Board’s Consolidated Trial Practice Guide. Paper 50, 1–2; Ex. 1037 (redline of default protective order). In particular, they state that

The Standing Protective Order has been modified to (a) restrict each party’s respective in-house counsel, directors, officers, and shareholders from seeing the subject confidential financial materials; (b) permit the use of confidential materials in related IPR Nos. IPR2024- 00004 and IPR2024-00098, as well as the federal district court case *Nuhn Industries Ltd. v. Bazooka Farmstar, LLC*, Case No. 3:22-cv-00015 (S.D. Iowa); and (c) requires the parties to destroy or return confidential materials within sixty (60) calendar days.

Paper 50, 1–2. Upon review of the protective order, we find the proposed protective order acceptable.

³ We also note that the record includes additional papers and exhibits which have been filed under seal, but for which no corresponding motion to seal has been filed. *See e.g.*, Papers 41, 51, 53; Exs. 1108, 1110–1112, 1140, 1141, 1142. These documents *will become public* if no grantable motion to seal is filed.

⁴ As the parties have now come to agreement (Paper 50, 1), it is not necessary to discuss the prior versions of the proposed protective order from the earlier motions (*see* Paper 17, 4; Paper 37, 5–6).

IV. ORDER

It is, ORDERED that

The Motions to Seal (Papers 17, 37, 50) are *granted* as to Patent Owner's Response (Papers 19, 20, 26, 27) and Exhibits 2055–2059, 2075–2078, and 2083;

The Joint Motion for entry of the proposed protective order (Paper 50) is *granted*;

The proposed protective order (Ex. 1036) submitted jointly by the parties is hereby entered; and

This protective order shall govern the conduct of the proceeding unless otherwise modified.

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