

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-in-Part Motion to Seal
37 C.F.R. §§ 42.5, 42.14

The parties filed a Joint Motion to Seal (Paper 72, “Mot.”) in whole or in part Papers 41, 51, 53; and Exhibits 1108, 1110–1112 and 1140–1142. For the reasons discussed below, the request is *denied* with respect to these documents. The Motion also seeks to seal portions of the Final Written Decision (Paper 71; Ex. 1143 (including proposed redactions)). The request is *granted* with respect to the Final Written Decision.

The Motion states that “[t]hese documents refer to and describe the contents of the documents that were previously sealed by the Board in the Decision Granting Motions to Seal and Entering Protective Order (Paper 70).” Mot. 1. For this reason, the parties request that these documents remain sealed. *Id.*

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,¹ “[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.

¹ USPTO, Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019, <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“TPG”).

With respect to the Final Written Decision, the parties' proposed redactions (Ex. 1143) are limited to information that we found to be confidential. *See* Paper 70. Further, the parties limited redactions to the Final Written Decision are sufficiently discrete. This treatment of the confidential information effectively balances the parties' 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 seal-in-part the Final Written Decision, as the parties have shown good cause.

With respect to Papers 41, 51, 53, and Exhibits 1108, 1110–1112, 1141, and 1142, the parties' proposed redactions are not limited to information that we previously found to be confidential. For example, some of the redactions in Papers 41, 51, 53 (*see* Papers 42, 52, 54) and Exhibits 1140, 1142 relate to Exhibits 1108, 1110–1112 and are unrelated to information that we previously found to be confidential. It is unclear at this stage why some of those redactions relate to confidential information. Further, no redacted copies of Exhibits 1108, 1110, and 1111 are provided. However, Exhibits 1108, 1110, and 1111 do not appear to only include confidential information.

Finally, concerning, Exhibit 1141 there does not appear to be any information to seal. The public version of Exhibit 1141 does not appear to include any redactions.

For these reasons, the parties' Motion to Seal Papers 41, 51, 53, and Exhibits 1108, 1110–1112, and 1140–1142 is *denied*. However, the parties are authorized to file a new motion to seal to attempt to rectify the noted deficiencies. Any new motion to seal must be filed *within ten days* of receiving this order.

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

ORDER

It is, ORDERED that

The Motion to Seal is *granted* as to the Final Written Decision (Paper 71); and

The Motion to Seal is *denied* as to Papers 41, 51, 53, and Exhibits 1108, 1110–1112, and 1140–1142.

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