

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OMEGA LINER COMPANY, INC.,

Petitioner

v.

BUERGOFOL GmbH,

Patent Owner.

CASE NO.: IPR2023-01372
U.S. PATENT NO. 9,657,882

**PATENT OWNER'S MOTION TO SEAL EXHIBITS 2036, 2037, 2038, AND
2039**

I. INTRODUCTION

Patent Owner (“PO”) submits this motion to request that the Board seal un-redacted versions of Exhibits 2036-2039 submitted with Patent Owner’s Opposition to Petitioner’s Motion for Sanctions on January 7, 2025 and entry of the Default Protective Order.

The PTAB set out the requirements for a motion to seal in the Informative Order in *Argentum Pharmaceutical LLC v. Alcon Research, Ltd.*, IPR2017-01053, paper 27 (Jan. 19, 2018):

A party moving to seal must show “good cause” for the relief requested. 37 C.F.R. § 42.54(a). We direct the parties to prior Board decisions for guidance on how to establish “good cause” to seal a document or thing in an *inter partes* review. *See Garmin Int’l v. Cuozzo Speed Techs., LLC*, Case IPR2012-00001 (PTAB Mar. 14, 2013) (Paper 34) (“IPR001”) and *Corning Optical Communications RF, LLC, v. PPC Broadband, Inc.*, Case IPR2014-00440 (PTAB April 6, 14, and 17, 2015) (Papers 46, 47, 49) (“IPR440”).

Argentum, paper 27, pp. 2-3. The *Corning* case referenced in *Argentum* set forth a three-prong test to satisfy good cause. *Corning*, paper 47, pp. 2-3. The definition of confidential information is found in 37 C.F.R. §42.2 as “trade secret or other confidential research, development, or commercial information.” The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. PO, as the moving party, has the burden of proof in showing entitlement to the requested relief. 37 C.F.R. §42.20(c). For the following reasons, Patent Owner submits that it has shown good cause as to why

Exhibits 2036-2039 should be sealed.

II. PATENT OWNER SHOWS GOOD CAUSE AND SATISFIES THE ANALYSIS FOR GOOD CAUSE SET OUT IN *ARGENTUM*

The *Corning* case referenced in *Argentum* set forth a three-pong test to satisfy good cause, and *Argentum* established the framework for establishing good cause. The PTAB held in *Argentum*:

“Good cause” for sealing is established by a “sufficient explanation as to why” the “information sought to be sealed is confidential information” (IPR001, Paper 34, 3), a demonstration that the information is not “excessively redacted” (IPR440, Paper 46, 2), and a showing that, on balance, the strong “public[] interest in maintaining a complete and understandable record” is outweighed by “the harm to a party, by disclosure of information” and “the need of either party to rely specifically on the information at issue.” IPR440, Paper 47, 3 (footnote omitted). Consequently, a movant to seal must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record. 37 C.F.R. § 42.54(a); IPR440, Paper 47, 2–3; IPR440, Paper 49, 2.

Argentum, IPR2017-01053, Paper 27, 3-4. PO presents the following information to show good cause for sealing un-redacted versions of Exhibits 2036 below.

A. Identification of the Exhibits PO Seeks to Seal and Brief Description of the Subject Matter of the Exhibits

The identity of the documents Patent Owner seeks to seal by this motion are as follows:

- Exhibit 2036 is internal Buergofol email correspondence regarding a customer's complaint dated June 1 -June 4, 2012, that include pricing information (redacted);
- Exhibit 2037 is Buergofol email correspondence with a customer regarding a tearing complaint first mentioned by the customer on April 24, 2012 that identify specific internal film information (redacted);
- Exhibit 2038 is a customer visit report dated June 5, 2012, listing complaints of tearing and noting radial splitting of PA layer and other possible causes for the tearing, (specifics of pricing and customer's patent information redacted); and
- Exhibit 2039 is a customer visit report regarding a "winter problem" of adhesion and sampling the new, better separating inner film of the '882 patent in Nov. 2012 (specifics of certain films and supply agreement terms redacted).

Exhibits 2036-2039 involve correspondence between internal Buergofol employees and correspondence with two different customers regarding a recently reported tearing problem that occurred after curing of the resin.

B. The Subject Matter of the Exhibits is Confidential

PO does not publish or otherwise make publicly available private communications it has with its with its customers, suppliers, service providers,

and the like. The information contained in these exhibits references specific films sold commercially by PO, pricing information regarding various products, and discloses highly sensitive business information that is specifically related to PO's commercial products. The information contained in these exhibits falls squarely within the definition of "confidential information" as both confidential development, and commercial information. *Cuozzo*, paper 34, pg. 2; 37 C.F.R. §42.2. Petitioner has provided "sufficient explanation as to why" the "information sought to be sealed is confidential information" (IPR001, Paper 34, 3; *Argentum*, IPR2017-01053, Paper 27, 3.

PO proposes minor redactions to each of these Exhibits to preserve the confidentiality of PO's supply agreement terms and pricing to specific customers, as well as the internal designations attributed to certain of PO's products.

C. Exhibits 2036-2039 are Harmful to PO

PO respects the public's interest in maintaining a complete and understandable record. However, in the present case, the public's interest is outweighed by the realized harm to PO.

The adverse harm to PO is evident – customer complaints made public damage PO's image in the eyes of existing and potential customers. In addition, publicly disclosing pricing information negotiated between PO and its individual customers is harmful to PO's business interests. As is evident from EX2036-EX2039, these documents involve complaints from two different

customers regarding certain films manufactured and sold to those customers by PO, the provision of a sample of the new film being developed by PO to address the complaints (ultimately resulting in the '882 patent invention), film identification numbers, and confidential pricing information. PO is only redacting confidential film identification and pricing information mentioned in these Exhibits, information that that is not needed by the public.

D. PO's Harm Outweighs the Public's Interest in an Open Record

The redacted information from Exhibits 2036-2039 have no public value at all with respect to whether the Challenged Claims of the '882 patent are patentable. Indeed, maintaining un-redacted versions of these exhibits in the public record would create more confusion than maintaining a complete and understandable record. There can be no debate that publicly disclosing commercially sensitive business information of PO causes reputational harm to PO, as well as making it more difficult for PO to carry on its business by engaging in candid conversations with customers, vendors, and suppliers over specific pricing information and film products.

In view of the foregoing, PO has carried its burden in showing good cause to seal Exhibits 2036-2039, and respectfully requests that the un-redacted versions of these exhibits be sealed and entry of the Default Protective Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PATENT OWNER'S MOTION TO SEAL EXHIBITS 2036, 2037, 2038, AND 2039, was served by filing this document on the date indicated below through the Patent Trial and Appeal Case Tracking System (P-TACTS) and via e-mail to the following attorneys of record for the Patent Owner listed below:

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