

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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OMEGA LINER COMPANY, INC.,  
Petitioner,

v.

BUERGOFOL GmbH,  
Patent Owner.

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IPR2023-01372  
Patent 9,657,882 B2

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Before JEFFREY N. FREDMAN, GRACE KARAFFA OBERMANN,  
and KIMBERLY MCGRAW, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

ORDER

Denying Patent Owner's Motion to Seal Exhibits 2036–2039 (Paper 74)  
Ordering Patent Order to Show Cause With Respect to Exhibits 2044–2047  
35 U.S.C. § 316; 37 C.F.R. §§ 42.14, 42.20(c), 42.54(a)

## I. INTRODUCTION AND BACKGROUND

This Order addresses Patent Owner’s Motion to Seal Exhibits 2036–2039. Paper 74 (“Motion” or Mot.”). On January 7, 2025, Patent Owner filed unredacted version of those exhibits, with availability limited to “Parties and Board,” and redacted versions available to the public.<sup>1</sup> Petitioner opposes the Motion. Paper 82 (“Opp.”).

Our rules protect “confidential information” from disclosure. 37 C.F.R. § 42.54. Patent Owner, as the movant, bears the burden of demonstrating good cause for the requested relief. 37 C.F.R. § 42.20(c).

For reasons that follow, we *deny* the Motion because Patent Owner has not shown sufficiently that the exhibits sought to be sealed contain “truly confidential” information.<sup>2</sup> *Argentum Pharmaceutical LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27, 2–3 (PTAB Jan. 19, 2018) (informative). We remove the “Parties and Board” filing designation associated with the unredacted versions of Exhibits 2036–2039 and redesignate them as publicly available.

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<sup>1</sup> On January 22, 2025, Patent Owner filed unredacted versions of Exhibits 2044–2047, with availability limited to “Parties and Board,” and redacted versions available to the public, but no associated motion to seal. Within five (5) business days of entry of this Order, Patent Owner shall show cause why the unredacted versions of Exhibits 2044–2047 should not be redesignated as available to the public.

<sup>2</sup> The Board previously denied, under similar factual circumstances, Patent Owner’s requests to seal Exhibits 1060–1063, 1070–1072, and 2029. *See* Paper 69 (Order, denying those prior requests).

## II. DISCUSSION

### *A. Applicable Principles of Law*

Strong public policy favors 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, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public, and a successful motion to seal must include a showing that the “information sought to be sealed is truly confidential” owned by the party seeking protection of the information. *Argentum Pharmaceutical LLC*, Paper 27, 2–3, 5.

We apply those principles in assessing the Motions, cognizant that our “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.” Patent Trial and Appeal Board Consolidated Trial Practice Guide (84 Fed. Reg. 64,280 (Nov. 2019)), 19 (“Trial Practice Guide”).<sup>3</sup>

### *B. Patent Owner’s Request to Seal Exhibits 2036–2037*

Exhibits 2036 and 2037 are machine translations of emails exchanged between Patent Owner and a customer (“Brandenburger”), which disclose “complaints” of Brandenburger associated with films supplied by Patent Owner, as well as “film identification” and “pricing information.” Mot. 4, 6.

Patent Owner seeks to seal the redacted versions of these exhibits on the basis that Patent Owner “does not publish or otherwise make publicly

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<sup>3</sup> Available at [https:// www.uspto.gov/TrialPractice Guide Consolidated](https://www.uspto.gov/TrialPracticeGuideConsolidated).

available private communications it has with its . . . customers, suppliers, service providers, and the like.” *Id.* at 4–5. Patent Owner further argues that “customer complaints made public damage” Patent Owner’s “image in the eyes of existing and potential customers.” *Id.* at 5. Patent Owner also asserts that “disclosing pricing information negotiated between Patent Owner and its individual customers is harmful to PO’s business interests.” *Id.* Patent Owner comes forward with no argument or evidence, however, indicating that these emails were exchanged with any expectation, much less any obligation, that Brandenburger would maintain any confidentiality associated with the information sought to be sealed. *Id.* at 5–6.

Importantly, on that point, the only information redacted by Patent Owner from the public versions of these exhibits is pricing data (Exhibit 2036) and delivery bill numbers (Exhibit 2037) as disclosed to Brandenburger on June 4, 2012—any information in these exhibits that pertains to customer complaints has been publicly available since January 7, 2025, when Patent Owner placed this information in the public record. Nor has Patent Owner provided any persuasive argument or evidence that it maintains as confidential pricing information or delivery bill numbers dating back to June of 2012.

Under these particular and unique circumstances, we agree with Petitioner that the information sought to be sealed, consisting of decade-old pricing data and delivery bill numbers, was “conveyed to a customer” that was “at liberty to divulge” the information, therefore, the information “is not confidential.” Opp. 2 (quoting *Unisource Worldwide, Inc. v. Carrara*, 244 F. Supp. 2d 977, 987 (C.D. Ill. 2003)).

*C. Patent Owner's Request to Seal Exhibits 2038–2039*

Patent Owner seeks to seal information reflected in two customer complaint reports, namely, Exhibit 2038 and 2039. Mot. 4–5. Here again, Patent Owner argues that complaints reflected in those reports is confidential (*id.*), but filed these exhibits in the public record on January 7, 2025, without any attempt to redact from the publicly-available versions of those reports any information pertaining to those complaints. *See* Ex. 2038–2039 (redacted, public versions filed by Patent Owner, which reveal all details of the customer complaints).

To the contrary, as Petitioner points out, the information sought to be sealed in these exhibits consists of a few lines that generally refer to a customer's patent application (Exhibit 2038) and “the commercial product name” of a product sold by Patent Owner to the customer (Exhibit 2039). Opp. 4; *see* Mot. 4 (stating that the “specifics of pricing and customer's patent information redacted” from exhibits). Petitioner argues, and we agree, that Patent Owner makes no showing that the information sought to be sealed is truly confidential. *Id.* at 3–5. Nor has Patent Owner identified any concrete harm that could result from disclosing information, including pricing information, from over a decade ago. *See generally* Mot. Thus, for each of these reasons, Patent Owner has not shown good cause to seal Exhibits 2036–2039.

Additionally, Petitioner argues that the public versions of Exhibits 2036 –2039 are ineffectively redacted by Patent Owner and, thereby, Patent Owner has waived any claim of confidentiality. Opp. 7 (observing that the redactions from the public versions of the exhibits can be removed so that the allegedly confidential information is visible). Despite

being put on notice of its ineffective redactions, Patent Owner has made no attempt to cure its ineffective redactions from these public exhibits. We agree, therefore, that Patent Owner has waived any claim of confidentiality over the contents of these exhibits. Thus, for this independent and alternative reason, Patent Owner has not shown good cause to seal Exhibits 2036–2039.

Accordingly, we deny Patent Owner’s request to seal Exhibits 2038 and 2039.

### III. CONCLUSION

We *deny* the Patent Owner’s Motion to Seal Exhibits 2036–2039 (Paper 74). The unredacted versions shall be made publicly available. In addition, Patent Owner shall show cause why Exhibits 2044–2047 should not be redesignated as available to the public.

### IV. ORDER

It is

ORDERED that Patent Owner’s Motion to Seal Exhibits 2036–2039 (Paper 74) is *denied*; and

FURTHER ORDERED that, within five (5) business days of entry of this Order, Patent Owner shall show cause why Exhibits 2044–2047, which Patent Owner provisionally filed under seal without any accompanying motion to seal, should not be redesignated as available to the public.

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