IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FOIL BOARDING COMPANY, INC.
Petitioner,

v.

MHL CUSTOM, INC.
Patent Owner

U.S. Patent No. 9,586,659
IPR Case No.: IPR2024-00085

MOTION TO SEAL

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.54, Patent Owner, MHL Custom, Inc. ("MHL") moves the Board to seal Patent Owner's Response to the Petition for *Inter Partes* Review of U.S. Patent No. 9,586,659, filed on February 29, 2024. Good cause to seal this document exists because it contains sensitive, non-public information. A redacted version of Patent Owner's Response is being filed herewith as EX2046.

Patent Owner previously requested entry of the default Protective Order, EX2026, which was entered by the Board on July 8, 2024. Additionally, the Board previously granted, on July 8, 2024, Patent Owner's motion to seal its Preliminary Response.

II. GOOD CAUSE EXISTS FOR SEALING PATENT OWNER'S CONFIDENTIAL INFORMATION

In deciding whether to seal documents, the Board must find "good cause," and must "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." *Garmin v. Cuozzo*, IPR2012-00001, Paper 36 (PTAB Apr. 5, 2013). Good cause for sealing material is established by demonstrating that the balance of the following considerations favors sealing: whether (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. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative), at 4.

The unredacted versions of Patent Owner's Response includes information that Patent Owner has identified as confidential business information and is substantially the same information that the Board previously sealed with respect to Patent Owner's Preliminary Response. These documents are marked "PROTECTIVE ORDER MATERIAL" pursuant to the default Protective Order entered by the Board. On balance, the *Argentum* factors favor sealing the documents at issue.

With regard to the first *Argentum* factor, the information Patent Owner seeks to seal is truly confidential. The *Patent Trial and Appeal Board Consolidated Trial Practice Guide (November 2019)* ("*Trial Practice Guide*") states that "[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." *Trial Practice Guide* at 19. In the *Trial Practice Guide*, "[t]he rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or

other confidential research, development, or commercial information." *Id*. (citing 37 C.F.R. § 42.54).

The information that Patent Owner seeks to seal in the unredacted versions of Patent Owner's Response is confidential and sensitive business information, and in particular, revenue, sales volume, and market share information related to Patent Owner's products. Accordingly, the unredacted versions of Patent Owner's Response is marked "PROTECTIVE ORDER MATERIAL".

Turning to the second *Argentum* factor, Patent Owner would suffer concrete harm from the public disclosure of the confidential information sought to be sealed. In particular, public disclosure of revenue, sales volume, and market share information related to Patent Owner's products that is included in the unredacted versions of Patent Owner's Response could undermine Patent Owner's business and competitiveness in the market and provide information that competitors could use to Patent Owner's detriment.

Turning to the third *Argentum* factor, a genuine need to rely in the trial on the specific information sought to be sealed does not exist. The revenue, sales volume, and market share information in the unredacted versions of Patent Owner's Response is material to patentability only as a secondary consideration of nonobviousness, as it demonstrates commercial success of the invention. Additionally, the Board has routinely relied, as necessary, on confidential

information in a Final Written Decision while maintaining that confidential information under seal. *See, e.g., Petrol. Geo-Services Inc. v. WesternGeco LLC*, IPR2014-01477, Paper 71 (PTAB Jul 11, 2016).

Turning to the fourth *Argentum* factor, on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record. As noted above, the revenue, sales volume, and market share information sought to be sealed in the unredacted versions of Patent Owner's Response is material to patentability only as a secondary consideration of nonobviousness. Accordingly, the public interest in having details of Patent Owner's confidential business information is minimal.

In view of the reasons discussed above in connection with the *Argentum* factors, good cause exists for sealing the unredacted versions of Patent Owner's Response. As noted above, a redacted version of Patent Owner's Response is being filed herewith as EX2046.

III. REQUEST FOR CONFERENCE CALL WITH THE BOARD

Should the Board not be inclined to grant the present Motion to Seal, Patent Owner hereby requests a conference call with the Board to discuss any concerns prior to the Board issuing a decision on the Motion.

IV. CONCLUSION

Patent Owner respectfully requests that the Board seal the unredacted versions of Patent Owner's Response.

Dated: September 17, 2024 Respectfully submitted,

/Robert J. Theuerkauf/

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ATTORNEYS FOR PATENT OWNER

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on September 17, 2024, a copy of the Motion to Seal is being served by electronic mail on the following counsel of record:

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Dated: September 17, 2024

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