

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOMBARDIER RECREATIONAL PRODUCTS, INC.,
Petitioner,

v.

MHL CUSTOM, INC.,
Patent Owner.

IPR2024-00085¹ (Patent 9,586,659 B2)
IPR2024-00086² (Patent 9,359,044 B2)³

Before BART A. GERSTENBLITH, KEVIN W. CHERRY, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Motion to Seal
37 C.F.R. §§ 42.14, 42.54

¹ Bombardier Recreational Products Inc., who filed a petition in IPR2024-01107, is joined as petitioner (*see* Paper 29), and Foil Boarding Company, Inc., was terminated as petitioner (*see* Paper 32).

² Bombardier Recreational Products Inc, who filed a petition in IPR2024-01108, is joined as petitioner (*see* IPR2024-00086, Paper 29 (PTAB Jan. 15, 2025)), and Foil Boarding Company, Inc., was terminated as petitioner (*see* IPR2024-00086, Paper 32 (PTAB Jan. 23, 2025)).

³ The Board is entering the same Order in all captioned cases. The parties are not authorized to use this caption.

Patent Owner filed a “Motion to Seal.” Paper 24 (“Mot.” or “Motion”).⁴ Patent Owner moves to seal its Patent Owner Response (Paper 23, “Response”). Mot. 2. Patent Owner filed a public, redacted version of the Response as Exhibit 2046.

The Board previously granted another motion to seal filed by Patent Owner, in which Patent Owner sought to seal portions of its Preliminary Response and in which Patent Owner sought entry of the Board’s default Protective Order. *See* Paper 20.

The Motion is unopposed.

For the reasons discussed below, we *grant* Patent Owner’s Motion.

The record of an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. Only “confidential information” may be protected against public disclosure. 35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54. The Board observes a strong public policy in favor of making information filed in *inter partes* review proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Rsch., Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief

⁴ Patent Owner filed substantially identical papers and exhibits in IPR2024-00086. *See, e.g.*, Paper 24 (Motion to Seal). For simplicity, we cite to IPR2024-00085.

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requested should be granted. 37 C.F.R. § 42.20(c). That includes a sufficient showing 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.

Argentum, Paper 27 at 3–4; *see also Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB Apr. 6, 2015) (requiring a showing that information has not been “excessively redacted”).

In the Motion, Patent Owner seeks to seal confidential business information, which the Board previously sealed with respect to Patent Owner’s Preliminary Response. *See* Mot. 3; *see also* Paper 20. Patent Owner marks the Response with “PROTECTIVE ORDER MATERIAL,” pursuant to the Board’s default Protective Order. *See* Paper 23.

Regarding *Argentum* factor (1), Patent Owner submits that “[t]he 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.” Mot. 4.

Regarding *Argentum* factor (2), Patent Owner submits that it would suffer concrete harm from public disclosure, because the “public disclosure of revenue, sales volume, and market share information related to Patent Owner’s products . . . could undermine Patent Owner’s business and competitiveness in the market and provide information that competitors could use to Patent Owner’s detriment.” Mot. 4

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Regarding *Argentum* factor (3), Patent Owner submits that “[t]he 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.” Mot. 4.

Regarding *Argentum* factor (4), Patent Owner submits that “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” and that “the public interest in having details of Patent Owner’s confidential business information is minimal.” Mot. 5.

Based on our review of the unredacted Patent Owner Response, we agree with Patent Owner that good cause exists to seal the Response. We find that the Response contains confidential, potentially sensitive information, and Patent Owner has persuasively shown that it would be harmed by not sealing the information. We further find that the interest in maintaining the information as confidential outweighs the public interest in having the information unsealed.

Accordingly, good cause exists to maintain the unredacted Patent Owner Response under seal.

Accordingly, it is

ORDERED that Patent Owner’s Motion (IPR2024-00085, Paper 24; IPR2024-00086, Paper 24) is *granted* in each of the above-captioned proceedings.

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