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Paper 20
Date: July 8, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FOIL BOARDING CO., INC.,
Petitioner,

v.

MHL CUSTOM, INC.,
Patent Owner.

IPR2024-00085 (Patent 9,586,659 B2)
IPR2024-00086 (Patent 9,359,044 B2)

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

CHERRY, *Administrative Patent Judge*.

ORDER
Granting Patent Owner's Motion to Seal and
Request for Entry of the Default Protective Order
37 C.F.R. §§ 42.14, 42.54

Patent Owner filed a "Motion to Seal and Request for Entry of Default Protective Order." Paper 7 ("Motion to Seal").[1] Patent Owner moves to seal its Preliminary Response[2] and Exhibit 2008.[3] Patent Owner seeks entry of the Board's Default Protective Order. Motion to Seal 2; Ex. 2026.

Patent Owner represents that Petitioner does not oppose the Protective Order Motion. Motion to Seal 2. Petitioner has not opposed Patent Owner's Motion to Seal.

For the reasons discussed below, we *grant* Patent Owner's Motion to Seal and enter the Board's Default Protective Order.

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

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[1] Patent Owner filed substantially identical papers and exhibits in IPR2024-00086. For simplicity, we cite to the papers filed in IPR2024-00085.
[2] Patent Owner filed a redacted public version of its Preliminary Response. *See* Ex. 2027. (In IPR2024-00086, the redacted version is Exhibit 2026.)
[3] Exhibit 2008 is the Declaration of Nicholas Leason (the "Leason Declaration"). Patent Owner filed a redacted public version of this declaration. *See* Ex. 2028. (In IPR2024-00086, the redacted version is Exhibit 2027.)

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 to Seal, Patent Owner seeks to seal portions of its Preliminary Response and the Leason Declaration, which include sales figures and market share information. Motion to Seal 4. Patent Owner explains that portions of its Preliminary Response and the Leason Declaration contain confidential and sensitive business information. *Id.* Patent Owner also states that publicly disclosing the information would cause "concrete harm" to Patent Owner. *Id.*

Based on our review of the unredacted Preliminary Response and Leason Declaration, we are persuaded that good cause exists to seal these documents because they contain confidential, potentially sensitive information, because Patent Owner has persuasively shown that it would be harmed by not sealing the information, and because the interest in maintaining the information as confidential outweighs the public interest in having the information unsealed. Accordingly, we conclude that good cause exists to maintain the unredacted Preliminary Response and Leason Declaration under seal.

Accordingly, it is

ORDERED that Patent Owner's Motion to Seal is *granted* with respect to the Preliminary Response and Exhibit 2008; and

FURTHER ORDERED that the Default Protective Order (Exhibit 2026) is entered in each of the above-captioned proceedings.

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