

Filed on behalf of Nuhn Industries Ltd.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC,
Petitioner

v.

NUHN INDUSTRIES LTD.,
Patent Owner

Case IPR2024-00098
U.S. Patent No. 11,541,708

**PATENT OWNER'S MOTION TO SEAL AND
FOR ENTRY OF PROTECTIVE ORDER**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Nuhn Industries Ltd.

(“Nuhn” or “Patent Owner”), by and through its counsel of record, files this Motion to Seal Exhibits 2055–2059, 2075–2078, and 2083 that accompany Patent Owner’s Response filed on August 14, 2024 (“the Response”). Nuhn also requests the Response be sealed. Sealing this information falls squarely within the Board’s authority to “[require] that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way ...” 37 C.F.R. § 42.54(a)(7).

Each of Exhibits 2055–2059, 2075–2078, and 2083 are being filed concurrently with the Patent Owner’s Response and Nuhn is filing redacted public versions of Exhibit 2083 and the Patent Owner’s Response with this Motion.

This Motion also addresses Petitioner’s request that the parties’ use of material designated under the Proposed Protective Order (EX2088 and EX2089) in related, but ancillary proceedings (i.e., the district court litigation captioned *Nuhn Industries Ltd. v. Bazooka Farmstar, LLC*, Case No. 3:22-cv-00015 (S. D. Iowa)) shall not be a violation of the Proposed Protective Order (EX2088 and EX2089).

I. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

The *Office Patent Trial Practice Guide* provides that “the 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.” 77

FED. REG. 48756, 48760 (Aug. 14, 2012). Those 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).

As detailed below, Exhibits 2055–2059, 2075–2078, and 2083 contain information that Nuhn maintains is sensitive and confidential financial information and business information. The exhibits Nuhn seeks to seal are discussed in detail in, and portions of them are reproduced in, the Response.

A. Exs. 2055–2059 – “Lagoon Crawler Sales Report”

Exhibits 2055–2059 are financial reports generated by Patent Owner. The reports contain revenue, sales, and customer information for Patent Owner’s sales of commercial embodiments of the ‘708 Patent. This information is highly sensitive, and Patent Owner does not make it available to the public or competitors like Petitioner in the ordinary course of its business. Doing so would risk Patent Owner’s competitive position in the market.

B. Ex. 2075 – “Email from Puck Enterprises”

Exhibit 2075 is a private email from a third party about a request to license Patent Owner’s patent technology. Patent Owner does not make such emails available to the public. Revealing Patent Owner’s private discussions about patent licensing to the public risks Patent Owner’s competitive position in the market.

C. Exs. 2076–2078 – “Nuhn Invoices to Eldon E. Stutsman Inc.”

Exhibits 2076 through 2078 are paid invoice reflecting Patent Owner’s sales of commercial embodiments of the ‘708 Patent to its customer Eldon E. Stutsman Inc. The invoices include pricing, sales, and customer information. Patent Owner does not make its customer invoices available to the public or competitors like Petitioner in the ordinary course of its business. Doing so would risk Patent Owner’s competitive position in the market.

D. Ex. 2083 - Declaration of Ian Nuhn

Exhibit 2083 is the declaration of Ian Nuhn. In his declaration, Mr. Nuhn discusses and reproduces sensitive and confidential financial and/or business strategy information that is contained in Exhibits 2055–2059 and 2075–2078. Just as those exhibits are confidential and deserving of protection from public disclosure, so are those portions of Mr. Nuhn’s declaration that discuss or reproduce them. Additionally, Mr. Nuhn’s declaration contains confidential and sensitive sales volume and pricing information that Nuhn has not disclosed publicly.

E. The Patent Owner’s Response

The Patent Owner Response discusses and reproduces sensitive and confidential financial that is contained in Exhibits 2055–2059, 2075, and 2083. Just as those exhibits are confidential and deserving of protection from public disclosure, so are those portions of the Patent Owner’s Response that discuss or reproduce them.

II. CERTIFICATION OF NON-PUBLICATION

On behalf of Nuhn, undersigned counsel certifies that the information sought to be sealed by this Motion has not, to their knowledge and based on Nuhn's representations, been published or otherwise made public.

**III. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY
PURSUANT TO 37 C.F.R. § 42.54**

Nuhn has in good faith meet-and-conferred with Petitioner Bazooka-Farmstar, LLC, but has been unable to reach agreement with Bazooka as to the scope of the proposed Protective Order. Specifically, Bazooka will only consent to the default Protective Order.

IV. PROPOSED PROTECTIVE ORDER

The Proposed Protective Order (EX2088 and EX2089) is closely modeled on the Standing Protective Order in Appendix B of the Patent Trial and Appeal Board's Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48756-66 (Aug. 14, 2012). The Standing Protective Order has been modified to (a) restrict each party's respective in-house counsel and other employees from seeing the subject confidential financial materials, (b) limits the use of confidential materials to the above-captioned *Inter Partes* review, and (c) requires the parties to destroy or return confidential materials within sixty (60) calendar days of a final judgment in the above-captioned *Inter Partes* review. Bazooka has not agreed to these amendments.

The Proposed Protective Order (EX2088 and EX2089) also includes an exception that Petitioner's and Patent Owner's use of material designated under the

Amended Protective Order in the federal district court case *Nuhn Industries Ltd. v.*

Bazooka Farmstar, LLC, Case No. 3:22-cv-00015 (S. D. Iowa), is not a violation of the Proposed Protective Order (EX2088 and EX2089).

The Proposed Protective has been submitted as Exhibit 2088, showing the proposed amendments to the Standard Protective Order in redline. A clean copy of the Proposed Protective Order has been submitted as Exhibit 2089.

V. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that the Board seal Exhibits 2055–2059, 2075–2078, and 2083 as well as its Response and enter the Proposed Protective Order filed as Exhibit 2089.

Dated: August 14, 2024

Respectfully submitted,

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Attorneys for Nuhn Industries Ltd.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the page limit set forth by the Board.

The undersigned further certifies this brief complies with the typeface requirements of 37 C.F.R. § 42.6(a)(2)(ii) and typestyle requirements of 37 C.F.R. § 42.6(a)(2)(iii). This brief has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 MSO in Times New Roman 14-point font.

Dated: August 14, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e), I certify that on August 14, 2024, a true and correct copy of the foregoing **Patent Owner's Motion to Seal and for Entry of Protective Order** was served by electronic mail on Petitioner's lead and backup counsel at the following addresses:

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