

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC,
Petitioner,

v.

NUHN INDUSTRIES LTD.,
Patent Owner.

IPR2024-00098
Patent 11,541,708 B2

Before MEREDITH C. PETRAVICK, MATTHEW S. MEYERS, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

DOUGAL, *Administrative Patent Judge*.

DECISION
Granting Motions to Seal and Entering Protective Order
37 C.F.R. §§ 42.5, 42.14, 42.54

I. Background

As discussed in more detail below, Patent Owner filed a Motion to Seal (Paper 19), and then the parties filed a first Joint Motion to Seal (Paper 23), followed by a second Joint Motion to Seal (Paper 46).

Patent Owner's Motion to Seal requests sealing of the Patent Owner Response and Exhibits 2055–2059, 2075–2078, and 2083. Paper 19. Both Joint Motions to Seal renew this request (Papers 23, 46) which Petitioner does not oppose (Paper 46, 1).

The Second Joint Motion to Seal acknowledges that “Petitioner previously filed Papers 29 and 43, EX1079-1081, and EX1096-1098 under seal, but without an associated motion to seal.” *Id.* The parties now request that *some* of those documents be kept under seal as discussed below. *Id.*

The first joint motion also requests entry of a protective order. Paper 23. The parties did not agree on Patent Owner's initial proposal in the Patent Owner Motion to Seal (Paper 19), but have now come to agreement on a revised version of the protective order (Paper 46).

We first address Patent Owner's Motion to Seal, followed by the Second Joint Motion to Seal, and end with the Motion to Enter a Protective Order.

II. Patent Owner's Motion to Seal

Patent Owner requests sealing of the Patent Owner Response and Exhibits 2055–2059, 2075–2078, and 2083. Paper 19; *see also* Papers 23, 46. Patent Owner filed sealed versions of the noted exhibits and a public version of Exhibit 2083. Patent Owner filed public (Paper 20) and sealed (Paper 21) versions of the Patent Owner Response.

There is a strong public policy in favor of 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, all papers filed in an *inter partes* review are open and available for access by the public. A party, however, may file a motion to seal confidential information, and the information is sealed pending the outcome of the motion. 37 C.F.R. § 42.54. As set forth in the Board’s Consolidated Trial Practice Guide,¹ “[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.” TPG 19.

We have reviewed the documents Patent Owner seeks to seal, and we agree the documents contain confidential information, such as Patent Owner’s financial information, and business strategy. Paper 19, 3–5. Moreover, Patent Owner is sufficiently discrete in its request to seal these documents by submitting redacted copies of many of the documents. Patent Owner’s treatment of the confidential information effectively balances its commercial and legal interests against the Board’s strong public policy that favors making information filed in *inter partes* review proceedings open to the public.

Accordingly, we grant Patent Owner’s Motion to Seal (Paper 19)² as Patent Owner has shown good cause.

As a reminder, confidential information that is subject to a protective order ordinarily becomes public forty-five (45) days after final judgment in a

¹ USPTO, Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019, <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“TPG”).

² As noted, this request was renewed in both Joint Motions to Seal. *See* Papers 23, 46. Thus, these requests are likewise granted.

trial. TPG 21–22. After final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public in accordance with 37 C.F.R. § 42.56.

III. Second Joint Motion to Seal

The Second Joint Motion to Seal requests sealing of Petitioner’s Reply to Patent Owner Response and Hearing Demonstratives, and Exhibits 1079–1081 and 1096. Paper 46, 1–3. This Motion acknowledges that these documents, as well as, Exhibits 1097, 1098 were filed under seal without an associated motion to seal. *Id.* at 1.

Petitioner filed public (Paper 30) and sealed (Paper 29) versions of the Reply to Patent Owner Response. Petitioner filed public (Paper 41) and sealed (Paper 43) versions of the Hearing Demonstratives.³

Petitioner filed sealed versions of the noted exhibits and a public version of Exhibits 1079 and 1096.

We have reviewed the documents the parties jointly seek to seal, and we agree the documents contain confidential information, such as Patent Owner’s financial information, and business strategy. Paper 46, 1–3. Moreover, the parties are sufficiently discrete in their request to seal these documents by submitting redacted copies of many of the documents. The treatment of the confidential information effectively balances its commercial and legal interests against the Board’s strong public policy that favors

³ The Hearing Order instructed that “Demonstratives should be filed as an Exhibit [(as opposed to as a Paper)] in the electric filing system.” Paper 34, 2 n.3. We remind the parties to thoroughly review all orders to ensure future compliance.

making information filed in *inter partes* review proceedings open to the public.

Accordingly, we grant the second Joint Motion to Seal (Paper 46) as the parties have shown good cause.

The second Motion to Seal also notes that “the parties . . . are no longer seeking to seal” Exhibits 1097 and 1098. Paper 46, 3. These documents are currently under seal, with no corresponding public versions. Accordingly, we order these documents be made public at the issuance of this Order.

As a reminder, confidential information that is subject to a protective order ordinarily becomes public forty-five (45) days after final judgment in a trial. TPG 21–22. After final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public in accordance with 37 C.F.R. § 42.56.

IV. Protective Order

The parties submitted a proposed protective order which they jointly propose entering.⁴ Paper 23, 1–2; Ex. 1070 (proposed protective order).

The parties have identified how the proposed protective order departs from the Board’s default protective order set forth in Appendix B of the Board’s Consolidated Trial Practice Guide. Paper 23, 1–2; Ex. 1071 (redline of default protective order). In particular, they state that

The Standing Protective Order has been modified to (a) restrict each party’s respective in-house counsel, directors, officers, and shareholders from seeing the subject confidential

⁴ As the parties have now come to agreement (Paper 23, 1), it is not necessary to discuss the prior version of the proposed protective order from the earlier motion (*see* Paper 19, 2).

IPR2024-00098
Patent 11,541,708 B2

financial materials; (b) permit the use of confidential materials in related IPR Nos. IPR2023-01161 and IPR2024-00098, as well as the federal district court case *Nuhn Industries Ltd. v. Bazooka Farmstar, LLC*, Case No. 3:22-cv-00015 (S.D. Iowa); and (c) requires the parties to destroy or return confidential materials within sixty (60) calendar days.

Paper 23, 1. Upon review of the protective order, we find the proposed protective order acceptable.

V. ORDER

It is, ORDERED that

The Motions to Seal (Papers 19, 23, 46) are *granted*;

Exhibits 1097 and 1098 are made *public*;

The Joint Motion for Entry of Stipulated Protective Order (Paper 23) is *granted*;

The proposed protective order (Ex. 1070) submitted jointly by the parties is hereby entered; and

This protective order shall govern the conduct of the proceeding unless otherwise modified.

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IPR2024-00098
Patent 11,541,708 B2
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