

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AFFORDABLE WIRE MANAGEMENT, LLC,
Petitioner,

v.

CAMBRIA COUNTY ASSOCIATION
FOR THE BLIND AND HANDICAPPED, INC.,
Patent Owner.

IPR2024-00139
Patent 10,177,551 B1

Before JAMES P. CALVE, FRANCES L. IPPOLITO, and
NATHAN A. ENGELS, *Administrative Patent Judges*.

ENGELS, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Motion to Seal and
Motion for Entry of Protective Order and
Patent Owner's Motion to Seal Patent Owner's Response and
Exhibits in Support of Patent Owner's Response
37 C.F.R. §§ 42.14, 42.54

Patent Owner Cambria County Association for the Blind and Handicapped, Inc. (“Patent Owner”) filed a Motion for Entry of Protective Order and a Motion to Seal Patent Owner’s Response and Exhibits in Support of Patent Owner’s Response. Paper 31. Petitioner filed a Motion to Seal Petitioner’s Reply and Exhibits in Support of Petitioner’s Reply. Paper 49. And Patent Owner filed a Motion to Seal Patent Owner’s Sur-reply and Exhibit in Support of Patent Owner’s Sur-reply. Paper 56. The Motion for Entry of Protective Order seeks entry of a protective order that was agreed upon by the parties. Paper 31, 1–3. The Motions to Seal seek to seal parts of the parties’ briefings and supporting exhibits that contain business confidential information. Papers 31, 49, 56. Petitioner did not oppose Patent Owner’s Motion for Entry of Protective Order or Patent Owner’s Motions to Seal. Patent Owner does not oppose Petitioner’s Motion to Seal. For the reasons discussed below, we *grant* the Motion for Entry of Protective Order (Paper 31) and the Motions to Seal (Paper 31, 49, 56) and enter the parties’ agreed-upon Proposed Protective Order (Papers 31, Ex. A).

Motion for Entry of Protective Order

The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information. 37 C.F.R. § 42.54(a). A protective order is not entered by default but must be proposed by a party and must be approved and entered by the Board. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide 19–20, 107 (Nov. 2019) (*available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>) (“Trial Practice Guide”). The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a Default Protective Order. *See id.* at 19–20, 107–22. The parties may propose modifications to the Default Protective

Order, and the Board generally will accept such changes that are consistent with the integrity and efficient administration of the proceedings. *Id.* at 115.

We observe that the agreed-upon Proposed Protective Order differs from the Default Protective Order in that it includes transcripts as potentially confidential information; includes a definition for “Confidential Information”; allows “Party Employees and Certain Third Parties” to access Confidential Information; requires a party filing documents or information containing Confidential Information to concurrently file public, redacted, non-confidential versions of such documents or information; limits the use of Confidential Information to this proceeding unless the express written consent of the designating party is obtained; and allows the parties to seek modification of the Protective Order in the future. Paper 31, Ex. B.

Upon review of the Proposed Protective Order, we determine that the changes are consistent with the integrity and efficient administration of the proceedings. The parties have shown sufficiently that the proposed modifications from the Board’s default protective order are necessary, and that the Proposed Protective Order is justified. For example, the parties seek to protect information such as “proprietary financial, research, development, technical, or commercially sensitive competitive information that the designating party maintains as highly confidential in its business or the disclosure of which is likely to cause harm to the competitive position of the designating party.” Paper 31, Ex. B; *see also id.* at 1–2. Given that the parties in this proceeding are competitors, we find that this added level of protection is warranted.

As such, we *grant* Patent Owner’s Motion for Entry of Protective Order (Paper 31) and enter the agreed-upon Proposed Protective Order in

this proceeding.

Motions to Seal

There is a strong public policy for making all 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. Generally, all papers filed in an *inter partes* review shall be made available to the public. *See* 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. Our rules, however, “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 19. Thus, a party may move to seal certain information (37 C.F.R. § 42.14); but only “confidential information” is protected from disclosure (35 U.S.C. § 316(a)(7)). Confidential information “means trade secret or other confidential research, development, or commercial information.” 37 C.F.R. § 42.2. The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a). The party moving to seal bears the burden of proof and must explain why the information sought to be sealed constitutes confidential information. 37 C.F.R. § 42.20(c).

Confidential information that is subject to a protective order ordinarily becomes public 45 days after final judgment in a trial. Trial Practice Guide 21–22. There is an expectation that confidential information relied upon or identified in a final written decision will be made public. *Id.* A party seeking to maintain the confidentiality of the information may file a motion to expunge the information from the record prior to the information becoming public. 37 C.F.R. § 42.56.

a. Exhibits 1041, 1043, 1061, 1066, 1067, 2008, 2010–2015, 2017, 2019, 2028, 2030–2032, 2038, 2041–2044, 2046, 2049–2054, 2056, 2057, 2061, 2064, 2066, and 2071

The parties' Motions to Seal seek to seal Exhibits 1041, 1043, 1061, 1066, 1067, 2008, 2010–2015, 2017, 2019, 2028, 2030–2032, 2038, 2041–2044, 2046, 2049–2054, 2056, 2057, 2061, 2064, 2066, and 2071.

Papers 31, 49, 56. The parties also filed redacted, public copies of each exhibit with the same exhibit number. The parties assert, and we agree, that the exhibits contain customer information, including names of customers and contact information; confidential and proprietary part numbers and product pricing; financial information, including sales data, revenues, sales growth, product pricing, part numbers, and other financial information concerning Patent Owner's products; and information concerning Patent Owner's research and development efforts, specific prototype and product testing, and specifications and drawings of its patented products. *See* Papers 31, 49, 56.

Given the subject matter of the information in these exhibits, we determine that the redacted information is truly confidential and that 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 under seal the redacted portions of Exhibits 1041, 1043, 1061, 1066, 1067, 2008, 2010–2015, 2017, 2019, 2028, 2030–2032, 2038, 2041–2044, 2046, 2049–2054, 2056, 2057, 2061, 2064, 2066, and 2071.

b. The Parties' Briefs

The parties contend that Patent Owner's Response (Paper 29), Petitioner's Reply (Paper 47), and Patent Owner's Sur-reply (Paper 55) contain confidential information. The parties also filed redacted, public versions of each filing. Papers 30, 48, 54. The parties contend, and we agree, that the filings incorporate, discuss, and analyze the confidential information contained in Exhibits 1041, 1043, 1061, 1066, 1067, 2008, 2010–2015, 2017, 2019, 2028, 2030-2032, 2038, 2041–2044, 2046, 2049–2054, 2056, 2057, 2061, 2064, 2066, and 2071. Papers 31, 49, 56.

We conclude that good cause exists to maintain under seal the redacted portions of the parties' briefs. The redacted portions refer to information provided in Exhibits 1041, 1043, 1061, 1066, 1067, 2008, 2010–2015, 2017, 2019, 2028, 2030-2032, 2038, 2041–2044, 2046, 2049–2054, 2056, 2057, 2061, 2064, 2066, and 2071, which we have determined contain confidential information subject to the protections of the protective order entered herein. Further, the parties have provided redacted, public versions of each brief with limited redactions that do not substantially impact the readability of the record.

Accordingly, we conclude that good cause exists to maintain under seal the redacted portions of the Patent Owner's Response (Paper 30), Petitioner's Reply (Paper 48), and Patent Owner's Sur-reply (Paper 54)

ORDER

In consideration of the foregoing, it is hereby

ORDERED that Patent Owner's Motion for Entry of a Protective Order and Motion to Seal Patent Owner's Response and Exhibits in Support of Patent Owner's Response (Paper 31) is *granted*;

FURTHER ORDERED that Patent Owner's Proposed Protective

Order is *entered* (Paper 31, Ex. A);

FURTHER ORDERED that Petitioner's Motion to Seal Petitioner's Reply and Exhibits in Support of Petitioner's Reply (Paper 47) is *granted*;

FURTHER ORDERED that Patent Owner's Motion to Seal Patent Owner's Sur-reply and Exhibit in Support of Patent Owner's Sur-reply (Paper 55) is *granted*; and

FURTHER ORDERED that the confidential versions of Patent Owner's Response (Paper 29), Petitioner's Reply (Paper 47), and Patent Owner's Sur-reply (Paper 55) and Exhibits 1041, 1043, 1061, 1066, 1067, 2008, 2010–2015, 2017, 2019, 2028, 2030–2032, 2038, 2041–2044, 2046, 2049–2054, 2056, 2057, 2061, 2064, 2066, and 2071 shall remain sealed and designated as “Parties and Board” until further notice.

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FOR PETITIONER:

Kevin Amendt
Williams Dixon
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.
kcamendt@mintz.com
wsdixon@mintz.com

FOR PATENT OWNER:

Daniel Melman
Theodore McDonough
ECKERT SEAMANS CHERIN & MELLOTT LLC
dmelman@eckertseamans.com
tmcdonough@eckertseamans.com