

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.

IPR2024-00178
Patent 11,349,291

**MOTION TO SEAL AND MOTION FOR
ENTRY OF PROTECTIVE ORDER**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner submits this Motion to Seal and for Entry of Protective Order with respect to certain material and information to be designated CONFIDENTIAL PROTECTIVE ORDER MATERIAL. In conjunction with the filing of its Patent Owner's Response, Patent Owner intends to file certain exhibits containing material that is confidential and proprietary to Patent Owner.

A party seeking to protect confidential information may seek entry of a protective order in a proceeding before the Board. *See, e.g., Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34 (P.T.A.B. Mar. 14, 2013). Upon a showing of good cause, the Board may enter a Protective Order to protect from public disclosure such confidential information as disclosed by a party during the course of a proceeding before the Board. *See* 37 CFR § 42.54. Patent Owner submits that, in light of the reasons discussed herein, good cause exists to enter the agreed-upon Protective Order, and the added limitations are necessary in this proceeding.

Patent Owner intends to file in this proceeding documents containing Patent Owner's confidential and proprietary information. The confidential and proprietary information contained in the documents to be filed include Patent Owner's sales, revenues, and sales growth, product pricing and part numbers, the identity of customers, project bids and quotes, engineering drawings and specifications, and

installation guides. Patent Owner does not publicly disclose such information and it is maintained in confidence by Patent Owner. As Patent Owner and Petitioner are direct competitors in the solar industry, there is a need for Patent Owner to protect information concerning Patent Owner's sales, revenues, and sales growth, and the identity of its customers.

Similarly, Patent Owner's policy is that engineering drawings and technical information about its products are not publicly available, and are provided to customers and potential customers only upon execution of a non-disclosure agreement with Patent Owner. Patent Owner submits that disclosure to Petitioner (i.e., to Petitioner's principals and employees) of documents containing the foregoing types of information would create a substantial risk of harm to Patent Owner's competitive position.

The parties have conferred and agreed to the form of the Protective Order to be entered. The proposed Protective Order deviates from the Board's default protective order in two substantive respects. Specifically, the agreed-upon Protective Order differs from the Board's default protective order in that it limits the circumstances under which the parties and their employees may access confidential information, and it permits third parties to access confidential information in certain circumstances. Attached hereto as **Exhibit A** is a clean version of the agreed upon Protective Order. Attached hereto as **Exhibit B** is a

marked-up copy of the parties' proposed Protective Order which identifies changes made to the Board's default protective order.

For the reasons stated herein, Patent Owner submits that good cause exists to enter the Protective Order attached hereto as **Exhibit A** in this proceeding.

Respectfully submitted,

Dated: July 23, 2024 By: / Daniel J. Melman /
Daniel J. Melman (Reg. No. 55,451)
ECKERT SEAMANS CHERIN & MELLOTT, LLC
10 Bank St., Suite 700
White Plains, NY 10606
Email: dmelman@eckertseamans.com
Phone: 914.286.6447
Fax: 914.949.2909

EXHIBIT A

UNITED STATES PATENT AND TRADEMARK OFFICE

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**[PROPOSED]
PROTECTIVE ORDER**

This protective order governs the treatment and filing of confidential information, including documents, testimony, and transcripts.

1. Confidential information shall be clearly marked “CONFIDENTIAL PROTECTIVE ORDER MATERIAL.” Confidential Information means information that a designating party believes in good faith is not generally known to others and has significant competitive value such that unrestricted disclosure to others would create a substantial risk of serious injury, and which the designating party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, (ii) believes in good faith is protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy, or (iii) believes in good faith constitutes 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. Confidential Information shall include all documents referring or relating to the foregoing, including but not limited to copies, summaries, and abstracts of the foregoing.

2. Access to Confidential Information is limited to the following individuals who have executed the Acknowledgment appended to this order:

- a. **Party Representatives.** Representatives of record for a party in the proceeding.
- b. **Experts.** Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.
- c. **In-house counsel.** In-house counsel of a party.
- d. **Support Personnel.** Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives Confidential Information.
- e. **Party Employees and Certain Third Parties.** Employees of the disclosing party, the author, custodian, or recipient of a document or information containing Confidential Information, and any other person who otherwise possessed or knew the information contained in the document.

f. The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the Confidential Information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in 2.a.-2.e., shall be extended access to Confidential Information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose Confidential Information to that person and after signing the Acknowledgment. The party opposing disclosure to any such person under this sub-section shall have the burden of proving that such person should be restricted from access to Confidential Information.

4. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

a. Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

- ii. Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of

the redacted information does not qualify for confidential treatment.

- iii. For avoidance of doubt, a party filing documents or information containing Confidential Information shall concurrently file public, redacted, non-confidential versions of such documents or information, and the redactions will be tailored to protect only the confidential information contained in the documents or information.

b. Documents and Information Exchanged Among the Parties.

Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as CONFIDENTIAL PROTECTIVE ORDER MATERIAL and shall be produced in a manner that maintains its confidentiality.

6. Without the express written consent of the designating party, material marked CONFIDENTIAL PROTECTIVE ORDER MATERIAL shall not be used by the non-designating party for any purpose other than as reasonably necessary and appropriate for preparing for and participating in this proceeding. Any person or party subject to this protective order who in another proceeding becomes subject

to a motion to disclose another party's information designated CONFIDENTIAL PROTECTIVE ORDER MATERIAL shall promptly notify that party of the motion so that party may have an opportunity to appear and be heard in the other proceeding.

7. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

8. Right to Further Relief. Nothing in this Protective Order abridges the right of any party to seek its modification by the Board in the future, so long as such requested modification is reasonable and supported by good cause.

Dated: July __, 2024

SO ORDERED:

UNITED STATES PATENT AND TRADEMARK OFFICE

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**ACKNOWLEDGMENT FOR ACCESS TO
PROTECTIVE ORDER MATERIAL**

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the Confidential Information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

FOR RETAINED EXPERTS ONLY: I further certify that I am not a competitor to any party, or a consultant for, or employed by, or retained by such a competitor with respect to the subject matter of the proceeding.

Dated: _____, 2024

EXHIBIT B

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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[PROPOSED]
~~DEFAULT~~ PROTECTIVE ORDER

~~The following Default Protective Order will govern the filing and treatment of
confidential information in the proceeding:~~

~~Default Protective Order~~

This protective order governs the treatment and filing of confidential information, including documents ~~and~~, testimony, and transcripts.

1. Confidential information shall be clearly marked “CONFIDENTIAL PROTECTIVE ORDER MATERIAL.” Confidential Information means information that a designating party believes in good faith is not generally known to others and has significant competitive value such that unrestricted disclosure to others would create a substantial risk of serious injury, and which the designating party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, (ii) believes in good faith is protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy, or (iii) believes in good faith constitutes 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. Confidential

Information shall include all documents referring or relating to the foregoing, including but not limited to copies, summaries, and abstracts of the foregoing.

2. Access to ~~confidential information~~Confidential Information is limited to the following individuals who have executed the ~~acknowledgment~~Acknowledgment appended to this order:

~~(A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.~~

a. ~~(B)~~ **Party Representatives.** Representatives of record for a party in the proceeding.

b. ~~(C)~~ **Experts.** Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

c. ~~(D)~~ **In-house counsel.** In-house counsel of a party.

d. ~~(E)~~ **Support Personnel.** Administrative assistants, clerical staff, court reporters and

other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives ~~confidential information~~ Confidential Information.

e. **Party Employees and Certain Third Parties.** Employees of the disclosing party, the author, custodian, or recipient of a document or information containing Confidential Information, and any other person who otherwise possessed or knew the information contained in the document.

f. ~~(F)~~ **The Office.** Employees and representatives of the United States Patent and Trademark Office who have a need for access to the ~~confidential information~~ Confidential Information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in ~~(d)(2)(A)-(E).~~a.-2.e., shall be extended access to ~~confidential information~~Confidential Information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose ~~confidential information~~Confidential Information to that person and after signing the Acknowledgment. The party opposing disclosure to ~~that~~any such person under this sub-section shall have the burden of proving that such person should be restricted from access to ~~confidential information~~Confidential Information.

4. Persons receiving confidential information shall use reasonable efforts to

maintain the confidentiality of the information, including:

- a. ~~(A)~~ Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;
- b. ~~(B)~~ Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;
- c. ~~(C)~~ Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and
- d. ~~(D)~~ Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

a. ~~(A)~~ **Documents and Information Filed With the Board.**

i. ~~(i)~~ A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing

the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

ii.~~(ii)~~ Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and

non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

iii. For avoidance of doubt, a party filing documents or information containing Confidential Information shall concurrently file public, redacted, non-confidential versions of such documents or information, and the redactions will be tailored to protect only the confidential information contained in the documents or information.

b. ~~(B)~~ Documents and Information Exchanged Among the Parties.
Documents

(including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as ~~“CONFIDENTIAL~~ PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains its confidentiality.

6. Without the express written consent of the designating party, material marked CONFIDENTIAL PROTECTIVE ORDER MATERIAL shall not be used by the non-designating party for any purpose other than as reasonably necessary and appropriate for preparing for and participating in this proceeding. Any person or party subject to this protective order who in another proceeding becomes subject to a motion to disclose another party’s information designated

CONFIDENTIAL PROTECTIVE ORDER MATERIAL shall promptly notify
that party of the motion so that party may have an opportunity to appear and be
heard in the other proceeding.

7. ~~6.~~ Within 60 days after the final disposition of this action, including
the

exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

8. Right to Further Relief. Nothing in this Protective Order abridges the right of any party to seek its modification by the Board in the future, so long as such requested modification is reasonable and supported by good cause.

~~(k) Standard Acknowledgement of Protective Order. The following form may be used to~~
Dated: July __, 2024 SO ORDERED:

~~acknowledge a protective order and gain access to information covered by the protective order:~~

~~[CAPTION]~~

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**~~Standard~~ ACKNOWLEDGMENT FOR ACCESS TO
PROTECTIVE ORDER MATERIAL**

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the ~~confidential information~~ Confidential Information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the

Eastern District of Virginia for purposes of enforcing the
terms of the

Protective Order and providing remedies for its breach.

FOR RETAINED EXPERTS ONLY: I further certify that I am not a competitor to any party, or a consultant for, or employed by, or retained by such a competitor with respect to the subject matter of the proceeding.

[Signature]

Dated: _____, 2024

CERTIFICATE OF SERVICE

I certify that on this 23rd day of July, 2024, a true and correct copy of the foregoing **MOTION TO SEAL AND MOTION FOR ENTRY OF PROTECTIVE ORDER** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

KCAmendt@mintz.com;
WSDixon@mintz.com;
RCSweeney@mintz.com;
CAB_AWM@mintz.com.

Dated: July 23, 2024

/ Daniel J. Melman /
Daniel J. Melman (Reg. No. 55,451)