

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROVISUR TECHNOLOGIES, INC.
Petitioner

v.

TEXTOR MASCHINENBAU GMBH,
Patent Owner

Case IPR2024-00224
Patent No. 9,457,487

**PATENT OWNER TEXTOR MASCHINENBAU GMBH'S MOTION UNDER
37 C.F.R. §§ 42.14, 42.54, AND 42.55 TO SEAL EXHIBITS 2008, 2009, 2010,
2011, 2012, AND 2013 AND ENTER A PROTECTIVE ORDER**

I. INTRODUCTION

Patent Owner Textor Maschinenbau GmbH, requests that the confidential versions of Exhibits 2008, 2009, 2010, 2011, 2012, and 2013 be sealed under 37 C.F.R. § 42.55. Good cause to seal these documents exists because these documents contain sensitive, non-public disclosures regarding Patent Owner and Petitioner's sales and customers that neither party would make public. Patent Owner submits this motion to seal confidential versions of Exhibits 2008, 2009, 2010, 2011, 2012, and 2013 and requests entry of a protective order in the form attached as Exhibit A.¹

Pursuant to 37 C.F.R. § 42.55, Patent Owner, Textor Maschinenbau GmbH ("Patent Owner" or "Textor") respectfully submits this Motion to Seal the unredacted versions of Exhibits 2008, 2009, 2010, 2011, 2012, and 2013. Public, redacted versions of these documents are submitted with this motion in accordance with Board procedures.

II. GOVERNING RULES AND PTAB GUIDANCE

Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public, but a party may

¹ Petitioner proposes limited revisions to the PTAB's Default Protective Order to preclude "Parties" and "In-house counsel" from having access to the confidential versions of Exhibits 2008, 2009, 2010, 2011, 2012, and 2013. Exhibit B is attached and is a redline version of Patent Owner's proposed Protective Order showing changes from the PTAB's Default Protective Order.

file a motion to seal and the information at issue is sealed pending the outcome of the motion.

Similarly, 37 C.F.R. § 42.14 provides:

The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

Federal Rule of Civil Procedure Rule 26(c)(1)(G) defines confidential information that may be protected by a Protective Order as:

a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way[.]

The Trial Practice Guide and PTAB Rules adopt this definition:

The 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.

Consolidated Trial Practice Guide November 2019, at 19.

III. IDENTIFICATION OF ALLEGED CONFIDENTIAL INFORMATION

Exhibit 2008 is confidential as it is an excerpt of an expert report containing and based on sensitive commercial information. Exhibit 2009 is confidential as it is an internal spreadsheet containing sensitive commercial information. Exhibit 2010 is confidential as it is an internal spreadsheet containing sensitive commercial information. Exhibit 2011 is confidential as it is an excerpt of an expert report containing and based on sensitive commercial and development information. Exhibit 2012 is confidential as it contains sensitive development information. Exhibit 2013 is confidential as it contains sensitive commercial information. 37 C.F.R. § 42.54.

IV. REASONS FOR SEALING THE CONFIDENTIAL INFORMATION

Exhibits 2008, 2009, 2010, 2011, 2012, and 2013 include information protected by the protections of a protective order in a parallel litigation between the parties. Exhibits 2008, 2009, 2011, and 2013 contain confidential commercial information such as sensitive customer, sales, and pricing information. Exhibits 2011 and 2012 contain sensitive information regarding product development. Further, the PTAB has previously granted Protective Orders in proceedings between Provisur and Weber, Inc. and Weber Maschinenbau GmbH Breidenbach, parties related to Textor Maschinenbau GmbH and identified as real parties-in-interest in some of those proceedings. *See Weber, Inc. v. Provisur Techs., Inc.*, Case No. IPR2020-01556,

Paper 3; *Weber, Inc. v. Provisur Techs., Inc.*, Case. No. IPR2020-01557, Paper 2;
Provisur Techs., Inc. v. Weber Maschinenbau GmbH Breidenbach, Case No.
IPR2024-00235, Paper 3.

V. RELIEF REQUESTED

For the reasons stated above by Patent Owner, and in compliance with the Board's order, this motion seeks that the Board seal and protect the information contained in the confidential versions of Exhibits 2008, 2009, 2010, 2011, 2012, and 2013. Textor further requests that the Board seal and protect the confidential information in these document until such time as it receives and rules on this Motion.

Respectfully Submitted,

/Adam P. Seitz/

Adam P. Seitz, Reg. No. 52,206

Adam M. Sandwell, Reg. No. 72,484

adam.sandwell@eriseip.com

Megan J. Redmond, *pro hac vice* to be filed

megan.redmond@eriseip.com

Hunter A. Horton, *pro hac vice* to be filed

hunter.horton@eriseip.com

Carrie Bader, *pro hac vice* to be filed

carrie.bader@eriseip.com

ERISE IP, P.A.

7015 College Boulevard, Suite 700

Overland Park, Kansas 66211

Telephone: (913) 777-5600

Facsimile: (913) 777-5601

adam.seitz@eriseip.com

PTAB@eriseip.com

Paul R. Hart, Reg. No. 59,646

paul.hart@eriseip.com
Nathan S. Byers, Reg. No. 81,095
nathan.byers@eriseip.com
ERISE IP, P.A.
717 17th Street, Suite 1400
Denver Colorado 80202
Telephone: (913) 777-5600
Facsimile: (913) 777-5601

ATTORNEYS FOR PATENT OWNER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PATENT OWNER
TEXTOR MASCHINENBAU GMBH'S MOTION UNDER 37 C.F.R. §§ 42.14,
42.54, AND 42.55 TO SEAL EXHIBITS 2008, 2009, 2010, 2011, 2012, AND 2013
AND ENTER A PROTECTIVE ORDER was served on July 2, 2024, by email on the
following counsel of record for Petitioner:

Michael G. Babbit	mbabbit@willkie.com
Sara T. Horton	shorton@willkie.com
Ren-how H. Harn	rharn@willkie.com
Mitchell M. Feldhake	mfeldhake@willkie.com

WILLKIE FARR & GALLAGHER LLP
ProvisurPTAB@willkie.com

Dated: July 2, 2024

Respectfully submitted,

/Adam P. Seitz/

Adam P. Seitz, Reg. No. 52,206
adam.seitz@eriseip.com

ATTORNEYS FOR PATENT OWNER

Exhibit A

PROTECTIVE ORDER

The following Standing Protective Order will be automatically entered and apply into the following proceedings: *Provisur Technologies, Inc. v. Textor Maschinenbau GmbH*, IPR2024-00224:

STANDING PROTECTIVE ORDER

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

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL.”
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) 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.

- (D) 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 (d)(2)(A)–(D), 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 that person 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;

- (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) 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) 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) Documents and Information Filed With the Board.
 - (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) 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.

- (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 “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains

its confidentiality.

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.

VI. 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 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.

_____ Date: _____

Exhibit B

DEFAULT PROTECTIVE ORDER

The following Standing Protective Order will be automatically entered and apply into the following proceedings: *Provisur Technologies, Inc. v. Textor Maschinenbau GmbH, IPR2024-00224*:

STANDING PROTECTIVE ORDER

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

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL.”

2. Access to confidential information is limited to the following individuals who have executed the 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.~~

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

— ~~(C)(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.

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

~~(E)(C)~~ 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.

~~(F)~~(D) 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 (d)(2)(A)–(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 that person 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;
- (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) 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) 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) Documents and Information Filed With the Board.
 - (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) 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.

- (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 “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains

its confidentiality.

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.

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 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.

_____ Date:_____