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Paper 14
Date: June 11, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NJOY, LLC, and NJOY HOLDINGS, INC.,
Petitioner,

v.

JUUL LABS, INC.,
Patent Owner.

IPR2024-00231
Patent 10,130,123 B2

Before KRISTINA M. KALAN, KIMBERLY McGRAW, and AVELYN ROSS, *Administrative Patent Judges*.

ROSS, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Motion to Seal
37 C.F.R. § 42.14

Granting Petitioner's Motion to Seal
37 C.F.R. § 42.14

Granting Patent Owner's Request for
Entry of Proposed Stipulated Protective Order
37 C.F.R. § 42.54

Patent Owner filed (1) a motion to seal its Patent Owner Preliminary Response and Exhibits 2001, 2003, 2025, 2026, and 2041 and (2) a motion requesting entry of a proposed stipulated Protective Order. Paper 9, 1 ("PO Motion"). Petitioner filed a motion to seal its Reply to Patent Owner's Preliminary Response. Paper 10, 1 ("Pet. Motion"). For the reasons that follow, Patent Owner's motions and Petitioner's motion are granted.

I. PATENT OWNER'S MOTION TO SEAL

Patent Owner filed a motion to seal the unredacted version of Patent Owner's Preliminary Response (Paper 7), the unredacted version of the Declaration filed in support thereof (Exhibit 2001), as well as Exhibits 2003, 2025, 2026, and 2041, which are cited and discussed in the Preliminary Response and Declaration. PO Motion 1–2.

Patent Owner states that Exhibit 2003 is a document produced by Patent Owner, and that Exhibits 2025, 2026, and 2041 are deposition transcripts of Patent Owner's own witness from the parallel ITC investigation involving the challenged patent. *See* PO Motion 1. Patent Owner further asserts that the exhibits "were designated [] as 'Confidential Business Information Subject to Protective Order,' are subject to the applicable Protective Order from the parallel litigation," and contain "highly confidential and non-public information concerning business, financial, and/or strategy information of Patent Owner." PO Motion 1–2. Patent Owner also asserts that it "guards such information closely and has not made, and does not intend to make, this information publicly available." *Id*.

The standard for granting a motion to seal is "good cause." 37 C.F.R. § 42.54. The party moving to seal bears the burden of proof of showing entitlement to the requested relief, and establishing that information sought

to be sealed is confidential information. 37 C.F.R. § 42.20(c). Confidential information includes, but is not limited to, trade secret or other confidential research, development, or commercial information. 37 C.F.R. § 42.54(7).

Upon considering the contents of the confidential Exhibits 2001, 2003, 2025, 2026, and 2041, the Preliminary Response, and the Declaration, along with Patent Owner's representation as to confidentiality of the information contained in these papers, we determine that Patent Owner has sufficiently shown good cause for sealing these documents.

II. PETITIONER'S MOTION TO SEAL

Petitioner filed a motion to seal the unredacted version of Petitioner's Reply to Patent Owner's Preliminary Response (Paper 11) as well as Exhibits 1034–1037, which are cited and discussed in the Reply. Pet. Motion 1–2.

Petitioner states that its "Reply cites, describes, and/or quotes EX1034–EX1035, which are documents produced by Patent Owner in the parallel ITC investigation; EX1036–EX1037, which are deposition transcripts from the parallel ITC investigation involving the Challenged Patent; and EX2003, which Patent Owner has moved to seal." *Id.* Petitioner explains that Exhibits 1034–1037 "contain Patent Owner's confidential business information, were designated in the parallel ITC Investigation as 'Confidential Business Information Subject to Protective Order,' are subject to the applicable Protective Order from the parallel ITC Investigation" and that "Petitioners understand that Patent Owner has not made, and does not intend to make, information in the Confidential Exhibits publicly available." *Id.* at 1–2. Petitioners cite these exhibits to address secondary consideration arguments in Patent Owner's Preliminary Response. *Id.* at 2.

Upon considering the contents of confidential Exhibits 1034–1037 and the Reply, along with Petitioner's representation as to the confidentiality of the information contained in these papers, we determine that Petitioner has sufficiently shown good cause for sealing these documents. 37 C.F.R. § 42.54

III. PROPOSED PROTECTIVE ORDER

Patent Owner states, and Petitioner agrees (Pet. Motion 3), that both parties request entry of a proposed stipulated Protective Order (Exhibit 2101). PO Motion 3. Patent Owner states that modifications to the default protective order set forth in the Board's Trial Practice Guide are shown in redline in Exhibit 2100. PO Motion 2–3. The modifications to the default protective order include a definition of what constitutes confidential information and restrict who has access to the confidential information, excluding the named parties, patent owner, and in house counsel. *See* Ex. 2100. The proposed stipulated Protective Order does allow outside counsel of record for the parties to have access to the confidential information. *Id.* Patent Owner asserts that the revisions are intended to make the proposed stipulated Protective Order consistent with the protective order from the parallel ITC investigation, under which the protected information was originally produced. PO Motion 2–3.

Patent Owner has shown sufficiently good cause for the proposed modifications from the Board's default protective order and that entry of the proposed stipulated Protective Order is warranted.

Accordingly, it is

ORDERED that Patent Owner's Motion to Seal is *granted*;

FURTHER ORDERED that Petitioner's Motion to Seal is *granted*;

FURTHER ORDERED that the request for entry of the proposed stipulated Protective Order (Exhibit 2101) is granted; and

FURTHER ORDERED that the Protective Order (Exhibit 2101) shall govern the proceeding unless otherwise modified by the Board.

FOR PETITIONER:

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