

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROVISOR TECHNOLOGIES, INC.
Petitioner

v.

WEBER FOOD TECHNOLOGY GMBH
Patent Owner

Case IPR2024-00269
Patent No. 11,331,823

**PETITIONER PROVISOR TECHNOLOGIES, INC.'S MOTION UNDER 37
C.F.R. §§ 42.14, 42.54, AND 42.55 TO SEAL EXHIBIT EX1039 AND EX1040
AND ENTER A PROTECTIVE ORDER**

I. INTRODUCTION

Petitioner Provisur Technologies, Inc. requests that the confidential version of its Reply and its Exhibits 1040 and 1041 be sealed under 37 C.F.R. § 42.55. Good cause to seal these documents exists because the documents contains sensitive, non-public disclosures regarding Weber’s product development that Weber would not make public. Petitioner submits this motion to seal a confidential version of its Reply, and confidential versions of Exhibits 1040 and 1041 and requests entry of a protective order in the form attached as Exhibit A.¹

Pursuant to 37 C.F.R. § 42.55, Petitioner, Provisur Technologies, Inc. (“Petitioner” or “Provisur”) respectfully submits this Motion to Seal the unredacted versions of its Reply and its Exhibits 1040 and 1041. A public, redacted version of Provisur’s Reply is submitted with this motion in accordance with Board procedures.

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 the Reply and of Exhibits 1040 and 1041. Exhibit B is attached and is a redline version of Petitioner’s proposed Protective Order showing changes from the PTAB’s Default Protective Order.

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 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 1040 is confidential because it is an internal Weber memorandum that contains confidential product development information. 37 C.F.R. § 42.54. Exhibit 1041 is confidential because it contains deposition testimony from Weber's employees which Weber has designated as confidential.

IV. REASONS FOR SEALING THE CONFIDENTIAL INFORMATION

Exhibit 1040 has been produced under the protections of a protective order in a parallel litigation between the parties. Exhibit 1041 contains transcribed testimony from a deposition taken under the protections of the same protective order. The Reply cites these exhibits and quotes portions of them. These documents contain confidential information such as Weber's development information. Further, the PTAB has previously granted Protective Order's in proceedings between Provisur and Weber, Inc.—a party related to Weber Food Technology GmbH and identified as a real party-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.

V. RELIEF REQUESTED

For the reasons stated above by Petitioner, 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 the Reply, of Exhibit 1040, and Exhibit 1041.

Provisur further requests that the Board seal and protect the confidential information in this document until such time as it receives and rules on this Motion.

Respectfully Submitted,

WILLKIE FARR & GALLAGHER L.L.P.

/s/ Michael G. Babbitt

Michael G. Babbitt (Reg. No. 59,288)

Sara T. Horton (Reg. No. 61,449)

Ren-How H. Harn (Reg. No. 73,620)

Mitchell M. Feldhake (Reg. No. 79,902)

Henry C. Thomas (*pro hac vice* pending)

Keaton A. Sheeler (*pro hac vice* pending)

Attorneys for Provisur Technologies Inc.

Date: December 17, 2024
300 N LaSalle Dr.
Chicago, IL
312-728-9000

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2024, I caused a true and correct copy of the foregoing materials:

- **PETITIONER PROVISUR'S MOTION UNDER 37 C.F.R. §§ 42.14, 42.54, AND 42.55 TO SEAL EXHIBIT EX1039 AND EX1040 AND ENTER A PROTECTIVE ORDER**

to be served via electronic mail in its entirety on:

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Respectfully submitted,

Dated: December 17, 2024

/Michael G. Babbitt/

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Exhibit A

PROTECTIVE ORDER

The following Standing Protective Order will be automatically entered and apply into the following proceedings: *Provisur Technologies, Inc. v. Weber Food Technology GmbH*, IPR2024-00269:

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)–(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:_____

Exhibit B

~~DEFAULT~~ PROTECTIVE ORDER

The following Standing Protective Order will be automatically entered and apply into the following proceedings: *Provisur Technologies, Inc. v. Weber Food Technology GmbH*, IPR2024-00258:

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. Person who are owners of a patent involved in the proceeding and other persons who are name 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:_____