

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GENE COMPANY PTY LTD,

Petitioner,

v.

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Patent Owner.

Case No. IPR2024-00313

U.S. Patent No. RE47,045

**PATENT OWNER'S MOTION TO SEAL AND
ENTER DEFAULT PROTECTIVE ORDER**

I. Introduction

Patent Owner, The Trustees of Columbia University in the City of New York (“Columbia”), requests that the confidential versions of the Patent Owner’s Response, and Exhibits EX2094 (Boyer 2024), EX2191 (Saad Declaration) and EX2192 (Del Priore Declaration) be sealed under 37 C.F.R. § 42.54. Good cause to seal these documents exists because the entirety of the information in Exhibit EX2094 (Boyer 2024) is sensitive and non-public. Petitioner was contacted and does not oppose the entry of the default protective order but did not take a position as to this motion to seal.

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 concurrent 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.

It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7) (“The Director shall prescribe regulations -- . . . providing for protective orders governing the exchange and submission of confidential information”). In that regard, the *Office Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012) provides:

The rules 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.

* * *

Confidential Information: 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. § 42.54.

III. Identification of Confidential Information

The confidential information comes from a non-public abstract disclosing results of a clinical study by Alkeus. The abstract is non-public until October 18, 2024, because it is subject to an embargo by the American Academy of Ophthalmology. This information is contained in the following documents:

- Patent Owner’s Response in pages 51-52
- Exhibit EX2191 (Saad Declaration) in pages 3, 6, 7, 14-17

- Exhibit EX2192 (Del Priore Declaration) in pages 20, 120, 126, 128, 131, 136, 141-142
- Exhibit EX2094 (Boyer 2024)

IV. Good Cause Exists for Sealing the Confidential Information

The Board's 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. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). Moreover, the Board has recognized that by marking a document as confidential, a party showed that it "sought to limit distribution of the information in those documents." *See L'Oréal USA, Inc. et al v. Liqwd, Inc. et al*, PGR2018-00025, Paper 87. Here, the information that Patent Owner seeks to seal is information contained in a one-page abstract, which is subject to an embargo by the American Academy of Ophthalmology ("AAO"). Specifically, Patent Owner seeks to seal the entirety of Exhibit EX2094 (Boyer 2024) because the entire abstract is marked "CONFIDENTIAL" and "Do not disseminate before embargo is lifted by AAO," and redaction would not be practical. In addition, Patent Owner seeks to seal the portions of the Patent Owner's Response, pages 51-52, Exhibit EX2191 (Saad Declaration, pages 3, 6, 7, 14-17, and Exhibit EX2192 (Del Priore Declaration),

pages 20, 120, 126, 128, 131, 136, 141-142, that cite or substantially describe the abstract. Accordingly, there is good cause to grant this motion to seal.

III. PROPOSED PROTECTIVE ORDER

Pursuant to 37 C.F.R. § 42.54(a), Patent Owner proposes that the default protective order found in Appendix B of the Trial Practice Guide be entered, and Petitioner does not oppose this.

IV. CERTIFICATION OF NON-PUBLICATION

The undersigned counsel certifies the information sought to be sealed by this Motion to Seal has not, to their knowledge, been published or otherwise made public.

V. CONCLUSION

For the reasons set forth above, Patent Owner respectfully requests the Board grant this motion to seal and enter the default Protective Order.

Respectfully submitted,

Dated: September 23, 2024

/Mark J. Feldstein/

Mark J. Feldstein, Reg. No. 46,693

Counsel for Patent Owner

The Trustees of Columbia University in the
City of New York

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **PATENT OWNER'S MOTION TO SEAL AND ENTER DEFAULT PROTECTIVE ORDER** was served electronically via email on September 23, 2024, in its entirety on the following:

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Petitioner has consented to service by electronic mail.

Dated: September 23, 2024

/William Esper/
William Esper
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