

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 IPR2024-00313
Patent No. RE47,045

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION TO SEAL**

I. INTRODUCTION

Patent Owner (PO)'s Motion (Mot., Paper 22) seeks to seal "the confidential versions" of the Patent Owner Response (POR, Paper 21), EX2094 (Boyer 2024), EX2191 (Saad Declaration) and EX2192 (Del Priore Declaration). PO asserts that good cause exists on the basis that PO alleges the entirety of EX2094 (Boyer 2024) is "sensitive and non-public." Mot. 1. But PO has failed to satisfy the threshold showing that the material requested to be sealed is non-public, but less that it is sensitive and confidential and that good cause supports PO's requests. Accordingly, PO's motion should be denied.

II. OPPOSITION

All papers filed in an IPR are presumptively made open to the public unless the party seeking to seal demonstrates good cause commensurate in scope with the confidential information the movant seeks to seal. 35 U.S.C. §316(a)(1), (7); 37 C.F.R. §42.54. Public policy favors public access to Board proceedings and motions to seal are only granted "for good cause." *Garmin v. Cuozzo*, IPR2012-00001, Paper 34 at 1-3 (quoting 37 C.F.R. § 42.54); *see also Apple Inc. v. Samsung Electronics Co. Ltd.*, 727 F.3d 1214, 1221 (Fed. Cir. 2013) (courts have recognized a general right to inspect and copy public records and documents). The Board will only grant a motion to seal to protect "truly sensitive information" in a manner consistent with Fed. R. Civ. Pro. 26(c)(1)(G), "which provides for protective

orders for trade secret or other confidential research, development, or commercial information.” Consolidated Trial Practice Guide, 19-20 (Nov. 2019) (citing 37 C.F.R. § 42.14). 42.54. Accordingly, non-confidential information, including information that has been filed in the public record, will not be sealed.

PO asserts that good cause exists on the basis that PO alleges the entirety of EX2094 (Boyer 2024) is “sensitive and non-public” and that the POR, EX2191, and EX2192 reproduce the information from EX2094. Mot. 1. Notwithstanding PO’s certification (Mot. 4) that “the information sought to be sealed by this Motion to Seal has not, to their knowledge, been published or otherwise made public,” Petitioner has been unable to locate any confidential version of the POR, EX2191, or EX2192. It thus appears to Petitioner that PO made the allegedly “sensitive and non-public” material from EX2094 public through its POR, EX2191, and EX2192, which PO appears to have filed without redaction and without any confidentiality designation. Moreover, by PO’s own admission (Mot. 2), PO’s sole alleged basis for sealing the underlying document (EX2094) expired on October 18, 2024. Accordingly, PO fails to establish the information sought to be sealed is non-public, much less than it is confidential or sensitive and that good cause exists to support PO’s requests. Because PO failed to satisfy its burden to justify its request, PO’s motion should be denied.

III. CONCLUSION

For the reasons discussed above, Petitioner respectfully requests that the Board deny Patent Owner's Motion to Seal.

Respectfully submitted,

Date: October 23, 2024

/ Jad A. Mills /
Jad A. Mills, Lead Counsel
Reg. No. 63,344

CERTIFICATE OF SERVICE

I certify that the foregoing Petitioner's Opposition to Patent Owner's Motion to Seal was served on this 23rd day of October, 2024, on the Patent Owner at the electronic service addresses as follows:

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