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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASKELADDEN L.L.C.,
Petitioner,

v.

CALABRESE STEMER LLC,
Patent Owner.

IPR2024-00367 (Patent 7,357,310 B2)
IPR2024-00368 (Patent 8,783,564 B2)[1]

Before SHARON FENICK, SCOTT B. HOWARD, and ANDREAS BALTATZIS, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge.*

ORDER
Granting Patent Owner's Revised Motion to Seal
Granting Patent Owner's Motion to Expunge
Confidential Information
37 C.F.R. §§ 42.14, 42.54,42.56

[1] The Board is entering the same Order in each captioned proceeding. The parties are not authorized to use this combined caption.

I. Introduction

Calabrese Stemer LLC ("Patent Owner") filed a revised motion to seal Exhibit 2001[2] in both IPR204-00367 and IPR2024-00368. IPR2024-00367, Paper 25 ("Mot. to Seal"); IPR2024-00368, Paper 29. Askeladden L.L.C. ("Petitioner") did not file an opposition in either proceeding.

Patent Owner also filed a timely Motion to Expunge Confidential Information in each proceeding. IPR2024-00367, Paper 34; IPR2024-00368, Paper 38. Petitioner did not file an opposition in either proceeding.

II. Standard of Review

There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review that determines the patentability of claims in an issued patent and, therefore, impacts the rights of the public. Under 35 U.S.C. § 316(a)(1), the default rule is that all papers and exhibits filed in an *inter partes* review are open and available for access by the public. A party may, however, file papers or exhibits under seal together with a motion to seal, whereupon the papers or exhibits will be treated as sealed pending the outcome of the motion. *Id*. A party wishing to preserve its confidential information may file a motion to expunge the information from the record. 37 C.F.R. § 42.56.

Only "confidential information" may be protected from disclosure. 35 U.S.C. § 316(a)(7) (2018) ("The Director shall prescribe regulations . . . providing for protective orders governing the exchange and submission of

[2] Because Exhibit 2001 and the papers in IPR2024-00367 and IPR2024-00368 are substantially identical, our analysis focuses only on the papers submitted in IPR2024-00367.

confidential information."). In that regard, the Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) ("Trial Practice Guide"),[3] provides the following:

> 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.
>
> . . . .
>
> 2. 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. 37 C.F.R. § 42.54.

Trial Practice Guide at 19.

As the party seeking to protect its confidential information, the movant has the burden of proof to show that it is entitled to the requested relief. *See* 37 C.F.R. § 42.20(c) (2022). The standard for granting a motion to seal is "for good cause." 37 C.F.R. § 42.54. A motion to seal must include a proposed protective order and a certification that the movant has in good faith conferred or attempted to confer with the other party in an effort to come to an agreement as to the scope of the proposed protective order. *See id*.

In *Argentum Pharmaceuticals LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative), the Board set forth the following four factors it will consider when determining whether the moving party has shown good cause to seal confidential information:

> a movant to seal must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a

[3] *Available at* https://www.uspto.gov/TrialPracticeGuideConsolidated.

> concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

Argentum at 4.

III. Analysis

Patent Owner argues that the good cause standard for granting the Motion to Seal is satisfied. *See* Mot. 1–2. Specifically, Patent Owner argues that Exhibit 2001 "contains confidential information regarding licensing activities in the three patents that are subject to concurrent IPR proceedings." *Id.* at 1. Patent Owner further argues that "[e]ach of the license contracts contains a confidentiality clause" and that the licenses "define stringent limits on disclosure" of confidential information. *Id.* at 1–2.

After reviewing Exhibit 2001, we agree that the exhibit describes confidential information and contains an agreement to keep the information confidential. Additionally, Patent Owner relied on Exhibit 2001 as its only evidence of objective evidence of non-obviousness. *See* IPR2024-00367, Paper 15, 19–21 (Patent Owner's Sur-reply). Based on these particular circumstances, we find good cause to grant the Motion to Seal Exhibit 2001 in each proceeding.

Additionally, we grant Patent Owner's request to expunge Exhibit 2001 as it is not relied upon in the Final Written Decisions (IPR2024-00367, Paper 33; IPR2024-00368, Paper 37) or any other Decision issued by the Board. Thus, the sealed document is not necessary to a complete understanding of the trial record. Accordingly, we expunge Exhibit 2001 from the record in both IPR2024-00367 and IPR2024-00368.

IV. Order

Accordingly, it is hereby:

ORDERED that Patent Owner's Revised Motions to Seal (IPR2024-00367, Paper 25; IPR2024-00368, Paper 29) are *granted*; and

FURTHER ORDERED that Patent Owner's Motions to Expunge (IPR2024-00367, Paper 34; IPR2024-00368, Paper 38) are *granted*.

PETITIONER:

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