

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASKELOADDEN 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

Conduct of Proceeding

Granting Patent Owner's Unopposed Motion for Entry of a Protective Order

Dismissing Patent Owner's Motion to Seal

Revising Scheduling Order

37 C.F.R. §§ 42.5, 42.14, and 42.54(a)

¹ The Board is entering the same Order in all captioned proceedings. The parties are not authorized to use this combined caption.

I. Introduction

On January 24, 2025, Patent Owner filed two papers in each of these proceedings: a Motion to Seal and Motion for Protective Order,² and a Proposed Protective Order,³ which is a modified version of our default protective order. The Motion to Seal and Motion for Protective Order related to a document titled “Patent Owner’s Affidavit (Licensing)”⁴ filed as a paper on the same date, with visibility set to “Filing Party and Board.”

A conference call was conducted with the Board on January 30, 2025, and an order regarding the conduct of the proceeding (Jan. 31, 2025 Order)⁵ issued summarizing the call issued on January 31, 2025. Among the topics discussed was that the filing of papers as “Filing Party and Board” amounts to an *ex parte* communication with the Board. Jan. 31, 2025 Order, 2–3. Following the call, on February 4, 2025, Patent Owner filed a revised Motion for Protective Order⁶ and revised Proposed Protective Order⁷ (“Revised Protective Order”) in each proceeding.

On February 26, 2025, Patent Owner filed a Revised Motion to Seal.⁸ On February 26, 2025, Patent Owner also filed a “PO Declaration re Licensing”⁹ with visibility set to “Filing Party and Board” and a “PO Declaration re Licensing Redacted”¹⁰ with visibility set to “Public.”

² IPR2024-00367 Paper 18; IPR2024-00368 Paper 22.

³ IPR2024-00367 Paper 16; IPR2024-00368 Paper 20.

⁴ IPR2024-00367 Paper 17; IPR2024-00368 Paper 21.

⁵ IPR2024-00367 Paper 19; IPR2024-00368 Paper 23.

⁶ IPR2024-00367 Paper 20; IPR2024-00368 Paper 24.

⁷ IPR2024-00367 Paper 21; IPR2024-00368 Paper 25.

⁸ IPR2024-00367 Paper 25; IPR2024-00368 Paper 29.

⁹ IPR2024-00367 Ex. 2001; IPR2024-00368 Ex. 2001.

¹⁰ IPR2024-00367 Ex. 2002; IPR2024-00368 Ex. 2002.

A conference call in these proceedings was conducted on March 4, 2025. Judges Howard, Fenick, and Baltatzis were present, and the parties were represented by their respective counsel: Andrew W. Rinehart (Reg. No. 75,537) and Alton L. Absher (Reg. No. 60,687) for Petitioner and Werner Stemer (Reg. No. 34,956) for Patent Owner.

During the conference, the Board again explained that the filing of documents with visibility set to “Filing Party and Board” is problematic because it constitutes an *ex parte* communication with the Board, is inconsistent with the rules regarding routine discovery (37 C.F.R. § 42.51(b)(1)(i), and raises due process concerns.

Patent Owner indicated that it would be amenable to changing the visibility of the “PO Declaration re Licensing” to “Parties and Board Only,” but only after the Proposed Protective Order is entered. Counsel for Petitioner indicated that it does not oppose the Proposed Protective Order. However, Petitioner indicated it might file an opposition to Patent Owner’s Revised Motion to Seal after having an opportunity to review the unredacted version of the Declaration.

We orally granted the Motion for Protective Order while stating that we would issue a written order in due course, which we do herein. Patent Owner agreed to modify the visibility of the Declaration to “Parties and Board Only” and also to serve a copy of the Declaration on Petitioner via email. Given the oral hearing set for March 27, 2025, we revised the dates for objecting to evidence, submitting supplemental evidence, opposing the motion to seal, and filing a motion to exclude evidence. Specifically, any objections to Exhibit 2001 must be filed by March 7, 2025, and any supplemental evidence in response to the objections must be served by

March 12, 2025.¹¹ *See* 37 C.F.R. § 42.64(b)(1), (2). Petitioner may file an opposition to the Revised Motion to Seal by March 14, 2024 along with any motions to exclude (Revised Due Date 5 below). We also modified the due date for an opposition to any motion to exclude (Revised Due Date 6 below), and a reply to the opposition to the motion to exclude (Revised Due Date 7 below).

II. Modified Protective Order

The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information. 37 C.F.R. § 42.54(a). A protective order is not entered by default but must be proposed by one or more parties and must be approved and entered by the Board. Patent Trial and Appeal Board Consolidated Trial Practice Guide 19–20, 107 (Nov. 2019) (“Trial Practice Guide”).¹² The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a Default Protective Order. *See* Trial Practice Guide 19–20, 107–122. The parties may propose modifications to the Default Protective Order and the Board will generally accept such proposed changes if they are consistent with the integrity and efficient administration of the proceedings. *Id.* at 115. For example, the parties may agree to provide additional tiers or categories of confidential information, such as “Attorneys’ Eyes Only”; the Board will presumptively accept agreed-to changes that provide additional categories of confidentiality as long as they are reasonable and adequately define what types of materials are to be included in the additional categories. *Id.* at 115–116. Patent Owner asserts that good cause exists to enter the Proposed

¹¹ The parties should contact the panel as soon as practical if additional time is required.

¹² Available at <http://www.uspto.gov/TrialPracticeGuideConsolidated>

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Protective Order because “[t]he Declaration contains confidential information regarding licensing activities.” Revised Motion to Seal, 1.

We observe that the Revised Proposed Protective Order (IPR2024-00367, Paper 21; IPR2024-00368, Paper 25) differs from the Default Protective Order in that it modifies the definitions of who may receive Protective Order Information. Revised Proposed Protective Order 1. Specifically, the Proposed Protective Order eliminates experts and in-house counsel from the list of individuals granted access to confidential materials. *Id.*

After reviewing the proposed modifications to the Default Protective Order, we determine the changes are consistent with the integrity and efficient administration of the proceedings. The proposed definitions of who may have access to Protective Order Material places reasonable restrictions on who may have access to the information. *Id.* Accordingly, we grant Patent Owner’s unopposed request for entry of the proposed modified protective order.

III. Outstanding Motions and Papers

As discussed above, the Board will rule on Patent Owner’s Revised Motion to Seal¹³ after Petitioner has had an opportunity to file an opposition on March 14, 2025. Patent Owner’s Revised Motion to Seal is cumulative of Patent Owner’s previous Motions to Seal the Declaration. Accordingly, Patent Owner’s previous Motions to Seal¹⁴ are *dismissed* as moot.

¹³ IPR2024-00367 Paper 25; IPR2024-00368 Paper 29.

¹⁴ IPR2024-00367 Paper 18; IPR2024-00368 Paper 22.

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IV. Order

It is

ORDERED that Patent Owner's Motion to Seal and Motion for Protective Order (IPR2024-00367, Paper 20; IPR2024-00368, Paper 24) is *granted* as to the Motion for Protective Order and *dismissed* as moot as to the Motion to Seal;

FURTHER ORDERED that Patent Owner's Motion to Seal (IPR2024-00367 Paper 18; IPR2024-00368 Paper 22) is *dismissed* as moot;

FURTHER ORDERED that Petitioner may file an objection to Exhibit 2001 by March 7, 2025;

FURTHER ORDERED that if Petitioner objects to Exhibit 2001, Patent Owner may file supplemental evidence by March 12, 2025;

FURTHER ORDERED that Petitioner may file an opposition to Patent Owner's Revised Motion to Seal by March 14, 2024 (Revised Due Date 5 below);

FURTHER ORDERED that the Scheduling Order in each of these proceedings is modified as set forth in the Revised Due Date Appendix below.

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REVISED DUE DATE APPENDIX

DUE DATE 5 March 14, 2025

Motion to exclude evidence

DUE DATE 6 March 21, 2025

Opposition to motion to exclude

DUE DATE 7 5:00 pm ET, March 26, 2025

Reply to opposition to motion to exclude

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