

Filed on behalf of: Serendia, LLC

Entered: May 22, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JEISYS MEDICAL INC.,
Petitioner,

v.

SERENDIA, LLC,
Patent Owner.

Case IPR2024-00463
Patent 10,869,812

**PATENT OWNER SERENDIA, LLC'S
MOTION TO SEAL**

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Serendia, LLC respectfully requests the Board authorize the filing under seal of Patent Owner's Preliminary Response and Exs. 2003, 2004, 2015, 2041, 2052, 2054, 2062, 2071, 2084, 2112, 2140, 2141 (collectively, "Confidential Exhibits"). Patent Owner has previously moved for entry of a protective order to govern the protection of confidential information in this proceeding. *See* Paper 10.

The Confidential Exhibits contain Patent Owner's confidential information designated as PROTECTIVE ORDER MATERIAL under the Proposed Stipulated Protective Order. *See* Exhibit 2001 (Proposed Stipulated Protective Order). The designated materials Patent Owner seeks to seal include confidential technical and financial information, including financial data, design documents, and business information. These materials relate to the core of Patent Owner's business. Public disclosure of this information would significantly harm Patent Owner's competitive position because it would allow competitors to access sensitive technical information.

Patent Owner respectfully submits that the status of the parties as mutual competitors; the wide acceptance of the fact that highly sensitive and confidential technical information should be afforded protections from disclosure; and the

confidential nature of the information that is the subject of the Joint Proposed Protective Order all weigh strongly in favor of granting this motion.

II. GOOD CAUSE EXISTS TO SEAL THE CONFIDENTIAL EXHIBITS

The Trial Practice Guide provides that “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.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, the rules “identify confidential information in a manner consistent with Fed. R. Civ. P. 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.* (citing 37 C.F.R. § 42.54).

Here, good cause exists to allow Patent Owner to file the Patent Owner Preliminary Response and Confidential Exhibits under seal. As described in more detail below, the information in these materials that Patent Owner seeks to seal falls into two general categories: (1) non-public financial and business information (e.g., internal records of revenue and profits and agreements); and (2) non-public technical information relating to the design and functionality of Patent Owner’s products (e.g., design and technical specification files). As explained in detail for each exhibit below, good cause exists to seal the Confidential Exhibits, as each contains highly sensitive, non-public, commercial information, disclosure of which would create an elevated risk of commercial or apparent harm to Patent Owner.

In order to strike the appropriate balance and ensure that only truly confidential information is being sealed, Patent Owner provides the following detailed descriptions of the information in the Patent Owner Preliminary Response and the Confidential Exhibits that it seeks to seal; identifies the portions of each that it seeks to seal; and explains why the Board should seal these specific portions.

A. Patent Owner Preliminary Response and Exhibits 2140-2141

Patent Owner requests that the Board seal the Patent Owner Preliminary Response and Exhibits 2140-2141, which contain references to Patent Owner's confidential, non-public business information. The Patent Owner Preliminary Response provides an analysis of commercial success and copying that refers to Patent Owner's highly sensitive, non-public confidential business information, including financial data, agreements, and product development documents. Exhibits 2140-2141 are expert declarations that similarly provide analysis of Patent Owner's confidential information.

The Board should seal the information in the Patent Owner Preliminary Response and Exhibits 2140-2141 for several reasons. First, they include non-public, confidential information that is highly sensitive to Patent Owner. For example, the technical information is the result of significant resources by Patent Owner in developing, maintaining, and improving the technology underlying their respective products; public disclosure of this information would allow competitors

to more easily copy Patent Owner's technology and development process. Additionally, the Patent Owner Preliminary Response and Exhibits 2140-2141 each incorporate information from other confidential exhibits, such as Exs. 2003, 2004, 2015, 2052, 2054, 2062, and 2112 in the Patent Owner's Preliminary Response and Exs. 2041, 2062, 2071, and 2084 in the Declarations. Second, disclosure of this information could cause Patent Owner serious competitive harm by, for example, providing competitors with a strategic and unfair business advantage against either party in the marketplace. Third, Patent Owner has submitted concurrently herewith redacted versions of the Patent Owner Preliminary Response and Exhibits 2140-2141 that strike the appropriate "balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." 77 Fed. Reg. 48756, 48760, 48770 (Aug. 14, 2012).

Patent Owner requests that the Board seal the Patent Owner Preliminary Response and Exhibits 2140-2141 given that they contain Patent Owner's nonpublic financial, marketing, and technical information.

B. Financial Information

Patent Owner requests that the Board seal Exhibits 2041 and 2071, which contain Patent Owner's highly sensitive, non-public financial information, including profits and revenues.

The Board should seal Exhibits 2041 and 2071 because of the significant potential harm that would come from disclosure. First, the financial information in these exhibits is highly sensitive to Patent Owner. Second, disclosure of this financial information could cause Patent Owner serious competitive harm by, for example, providing competitors with a strategic and unfair advantage.

C. Business Information

Patent Owner requests that the Board seal Exhibit 2052, which contains Patent Owner's highly sensitive, non-public business information, including licensing negotiation discussions with Petitioner JEISYS. The Board should seal Exhibit 2052, because of the potential harm from disclosure substantially outweighs the public's interest in maintaining a complete and understandable file history for several reasons. First, the business information in this exhibit is highly sensitive to Patent Owner. Second, disclosure of this business information contained in the licensing discussions could cause Patent Owner serious competitive harm by, for example, providing other potential licensees with a strategic and unfair business advantage against them.

D. Documents Relating to Design and Development

Patent Owner requests that the Board seal Exhibits 2003, 2004, 2015, 2054, 2062, 2084, 2112, which contain Patent Owner's highly sensitive, non-public technical information, including documents relating to the design and development

of Patent Owner's products. Exhibits 2003, 2015, 2054, and 2112 are Patent Owner's filings from the ITC investigation including confidential information relating to the design and development of Patent Owner's products. Exhibit 2004 is Petitioner's filing from the ITC investigation including Patent Owner's confidential information relating to the design and development of Patent Owner's products. Exhibits 2062 and 2084 are technical documents conveying confidential information about the design and development of Patent Owner's products.

The Board should seal Exhibits 2003, 2004, 2015, 2054, 2062, 2084, and 2112 because of the significant potential harm that would come from public disclosure. First, the technical information and information relating to the design of their products is highly sensitive to Patent Owner. Second, disclosure of this information could cause Patent Owner serious competitive harm by, for example, providing competitors with a strategic and unfair advantage. Patent Owner invests significant resources in developing, maintaining, and improving the technology underlying its competitive products, and public disclosure of this information would allow competitors more easily to copy Patent Owner's technology and allow them to unfairly market competing products without making the same research and development investment as Patent Owner. Finally, Patent Owner has filed public, redacted versions of Exhibits 2003 and 2004 to aid in maintaining a balance between a public record and confidentiality.

III. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests the PTAB grant this motion.

Respectfully submitted,

Dated: May 22, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 22nd day of May, 2024, a true and correct copy of the foregoing **Patent Owner Serendia LLC's Motion To Seal** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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