

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CASPER SLEEP INC.,
Petitioner,

v.

WERNER MEDIA PARTNERS, LLC,
Patent Owner.

IPR2024-00474
Patent 10,842,301 B2

Before BARRY L. GROSSMAN, JASON W. MELVIN, and
RYAN H. FLAX, *Administrative Patent Judges*.

FLAX, *Administrative Patent Judge*.

ORDER
Granting Patent Owner' Second Unopposed Motion to Seal
37 C.F.R. § 42.14

I. INTRODUCTION

Werner Media Partners LLC (“Patent Owner”) is the owner of U.S. Patent 10,842,301 B2 (Ex. 1001, “the ’301 patent”). Paper 5, 1. On January 18, 2024, Casper Sleep Inc. (“Petitioner”) filed a Petition for *inter partes* review challenging the patentability of claims 1 and 2 of the ’301 patent (all claims). Paper 2, 1 (“Pet.”). On April 26, 2024, trial was instituted. Paper 7.

Patent Owner moves the Board, unopposed, to seal certain evidence as including confidential information, said evidence having been filed with its Sur-reply (Paper 31) on December 6, 2024. Paper 32 (“Motion” or “Mot.”). Patent Owner previously filed an unopposed motion to seal Exhibits 2022–2026 and for entry of a protective order (entered as Exhibit 2027), which was granted. Paper 23. For the reasons below, Patent Owner’s Motion is *granted*.

II. PATENT OWNER’S MOTION

Under 37 C.F.R. § 42.14, the default rule is that all papers filed in these proceedings are available to the public. Only “confidential information” is subject to protection against public disclosure. 35 U.S.C. § 326(a)(7); 37 C.F.R. § 42.55. As we previously explained, the Board also observes a strong policy in favor of making all information filed in *inter partes* review proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27, 3–4 (PTAB Jan. 19, 2018) (informative). “Redactions to documents filed in [a] proceeding should” are encouraged, but should “be limited to the minimum amount necessary to protect confidential information, and the thrust of the underlying argument or evidence must be clearly discernible from the

redacted versions.” PTAB Consolidated Trial Practice Guide at 91 (Nov. 2019) (“CTPG”).¹ The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). The standard for granting a party’s requested relief is “good cause.” *Id.* § 42.54(a).

Patent Owner certifies that the Motion is unopposed. Mot. 1. Patent Owner identifies its Sur-reply (Paper 31) and Exhibits 2029, 2030, 2033, and 2042, as containing information that should be sealed and protected under the protective order. Petitioner asserts that these documents “[i]nclude[] confidential material related to at least one of sealed Exhibits 2022–2026, [] 1074-1076, 1078, 1082, and Paper 24 (Reply),” i.e., Patent Owner’s initially sealed, confidential information, and Petitioner’s Reply and also-sealed exhibits addressing that information. Mot. 1–2.

We find Patent Owner has shown good cause to seal the above-identified exhibits and Sur-reply, in large part, because the parties have conferred and appear to agree this is necessary. 37 C.F.R. § 42.54(a).

The parties remain on notice that:

Confidential information that is subject to a protective order **ordinarily [will] become public** . . . 45 days after final judgment in a trial. There is an expectation that information **will be made public** where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial. A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public. 37 C.F.R. § 42.56. The rule balances the needs of the parties to submit confidential information with the public interest in maintaining a complete and understandable file history for public notice purposes. **The rule encourages**

¹ Available at www.uspto.gov/TrialPracticeGuideConsolidated.

parties to redact sensitive information, where possible, **rather than seeking to seal entire documents.**

CTPG at 21–22 (emphasis added). Again, the documents certified to contain confidential information (by both parties) have been filed only in their original form, now sealed, and no proposed public versions with limited redactions of the confidential information have been submitted.

We emphasize that, as explained above, should the Board rely on these documents in a final decision, there is a likelihood that they will be made public *in their entirety*, as the parties have neither proposed public redacted versions of the documents nor identified with particularity the specific confidential portions of the documents.

ORDER

Accordingly, it is hereby:

ORDERED that Patent Owner’s request to file confidential documents under seal is *granted*, and Paper 31, Exhibits 2029, 2030, 2033, and 2042 will be maintained as sealed until further notice; and

FURTHER ORDERED that Paper 24, requested by Petitioner to be maintained under seal in its prior Motion (Paper 24), but unintentionally omitted from our associated Order granting that Motion (Paper 27), will also be maintained as sealed until further notice.

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