

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BRUKER SPATIAL BIOLOGY, INC.,
Petitioner,

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE and
10X GENOMICS,
Patent Owner.

Case IPR2024-00526
Patent 11,542,554 B2

Before ZHENYU YANG, TAWEN CHANG, and CYNTHIA HARDMAN,
Administrative Patent Judges.

CHANG, *Administrative Patent Judge.*

ORDER

Granting Patent Owner's Motion to Seal (Paper 22)

Granting Petitioner's Motion to Seal (Paper 28)

37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

On December 10, 2024, Patent Owner¹ filed a Motion to Seal, seeking entry of the Default Protective Order and to seal under that order Exhibit 2064, Exhibit 2073, and portions of Exhibit 2024, Exhibit 2026, and Patent Owner's Response. Paper 22. Petitioner did not oppose Patent Owner's motion. *Id.* at 1.

On March 18, 2025, Petitioner filed a Motion to Seal Exhibit 1083, "because Patent Owner has designated EX1083 as confidential pursuant to the Default Protective Order." Paper 28, 2. Petitioner states it "does not oppose Patent Owner's request to seal financial information of the type reflected in EX1083 and expects that Patent Owner will submit papers further showing good cause for sealing this information along with a public redacted version of EX1083." *Id.* On April 18, 2025, Patent Owner filed its Response to Petitioner's Motion to Seal Exhibit 1083, arguing that good cause exists for sealing Exhibit 1083. Paper 33, 2–5. Patent Owner concurrently filed Exhibit 2083, a public version of Exhibit 1083 with the alleged confidential information redacted. *Id.* at 5.

For the reasons discussed below, we grant Patent Owner's Motion to Seal. We treat Petitioner's Motion to Seal Exhibit 1083 as a joint motion and also grant that motion.

¹ As noted in our Decision Granting Institution of *Inter Partes* Review, "[r]eferences to Patent Owner in this proceeding are to 10x Genomics and/or Harvard as appropriate in the particular context of the proceeding." Paper 14, 2, n.1.

II. LEGAL STANDARDS

The Board recognizes “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 which determines the patentability of claims in an issued patent and therefore affects the rights of the public.” *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34, 1–2 (PTAB Mar. 14, 2013). Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public.

Nevertheless, a party may file a motion to seal truly sensitive information. *See* 37 C.F.R. § 42.14; Trial Practice Guide,² 19. Under the rules governing this proceeding, confidential information is identified “in a manner consistent with Federal Rules of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” Trial Practice Guide 19 (citing 37 C.F.R. § 42.54).

The standard for granting a motion to seal is “for good cause,” and the moving party has the burden of showing that it is entitled to the requested relief. 37 C.F.R. §§ 42.20(c), 42.54. Under the good cause standard,

a movant to seal must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the

² Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019), *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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 Pharms. LLC v. Alcon Res., Ltd., IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative), 4.

III. PATENT OWNER’S MOTION TO SEAL (Paper 22)

A. Request for Entry of Default 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). Having reviewed Patent Owner’s motion, and for the reasons discussed below with respect to the information Patent Owner seeks to seal, we find that good cause exists to enter the Default Protective Order provided as Appendix B of Trial Practice Guide. Patent Owner’s motion is consequently granted with respect to the entry of the Default Protective Order.

B. Exhibits 2064 and 2073

Patent Owner contends that Exhibits 2064 and 2073 “contain confidential information related to design specification and design reviews of [Patent Owner’s commercial] Xenium product.” Paper 22, 3.

We find that Exhibits 2064 and 2073 are the type of research and development documents that businesses typically keep confidential to avoid competitive harm. Exhibits 2064 and 2073 also bear on their face indications of confidentiality, including, e.g.,

“CONFIDENTIAL-DO NOT DISTRIBUTE,” “FOR RESEARCH USE ONLY,” and/or “For internal use only.” Furthermore, Patent Owner represents it has “undertaken efforts to maintain the confidentiality of this information in the parallel district court litigation,” and Patent Owner’s counsel certifies that, to the best of their knowledge, these exhibits “have not been published or otherwise made public.” Paper 22, 2.

For the above reasons, we find that Patent Owner has established good cause to seal Exhibits 2064 and 2073, and accordingly grant Patent Owner’s Motion to Seal with respect to these exhibits.

C. Exhibit 2024

Exhibit 2024 is the Declaration of Hari Shroff, Ph.D. in Support of Patent Owner Response (“Shroff Declaration”) in this proceeding. Patent Owner asserts that paragraphs 121 and 122 of the Shroff Declaration should be designated as “Confidential – Protective Order Material” because they “discuss[] certain confidential information disclosed in EX2064 and EX2073.” Paper 22, 3. Patent Owner has filed a public version of the Shroff Declaration with these paragraphs redacted.

For the same reasons set forth above with regard to the sealing of Exhibits 2064 and 2073, we find Patent Owner has established good cause to seal paragraphs 121 and 122 of the Shroff Declaration, which discuss, excerpt, and/or otherwise disclose and rely on

information in Exhibits 2064 and 2073. Accordingly, we grant Patent Owner's Motion to Seal with respect to these paragraphs.

D. Exhibit 2026

Exhibit 2026 is the Declaration of Julie L. Davis in Support of Patent Owner Response ("Davis Declaration") in this proceeding. According to Patent Owner, "Ms. Davis . . . is 10x's economics expert" and "provides opinions on the commercial success of the Xenium product." Paper 22, 4.

Patent Owner asserts that paragraphs 33–35, Appendix B, and Appendix C of the Davis Declaration contains "confidential information pertaining to sales revenue associated with 10x's Xenium product." Paper 22, 4–5. Patent Owner has filed a public version of the Davis Declaration with these portions redacted.

We find that the redacted portions of the Davis Declaration contain financial information relating to Patent Owner's commercial Xenium product, which are of the type that businesses typically keep confidential to avoid competitive harm. Patent Owner represents it has "undertaken efforts to maintain the confidentiality of this information in the parallel district court litigation," and Patent Owner's counsel certifies that, to the best of their knowledge, "the confidential information in paragraphs 33-35 and Appendixes B and C of EX2026 have not been published or otherwise made public." Paper 22, 5.

For the above reasons, we find that Patent Owner has established good cause to seal paragraphs 33–35, Appendix B, and Appendix C of the Davis Declaration, and accordingly grant Patent Owner’s Motion to Seal with respect to these paragraphs and appendices.

E. Patent Owner’s Response (Paper 21)

Patent Owner contends that “Patent Owner’s Response discusses certain confidential information disclosed in EX2024, EX2026, EX2064, and EX2073” and should thus be sealed. Paper 22, 7. Patent Owner has provided a public version of Patent Owner’s Response, with certain portions of pages 61, 64, and 65 redacted.

We find the redacted portion of page 61 of Patent Owner’s Response discusses, quotes, and/or otherwise discloses and relies on research and development information contained in Exhibits 2024 and 2073, of a type that businesses typically keep confidential to avoid competitive harm. Similarly, the material redacted on pages 64–65 of Patent Owner’s Response discusses, quotes, and/or otherwise discloses and relies on financial information relating to Patent Owner’s commercial Xenium product, of the type that businesses typically keep confidential to avoid competitive harm.

For the above reasons, we find that Patent Owner has established good cause to seal the redacted portions of Patent Owner’s Response. Accordingly, we grant Patent Owner’s Motion to Seal with respect to the proposed redactions on pages 61, 64, and 65 in Patent Owner’s Response.

IV. PETITIONER’S MOTION TO SEAL EXHIBIT 1083 (PAPER 28)

Exhibit 1083 is the transcript of the deposition of Julie L. Davis. Based on a review of Petitioner’s Motion to Seal Exhibit 1083 and Patent Owner’s response to the motion (Paper 33), we understand that the confidential information at issue in this motion belongs to the Patent Owner rather than the Petitioner.

Having reviewed the proposed redactions in Exhibit 2083, we find that the redacted information generally pertains to counsel’s questions and Ms. Davis’s responses reflecting financial information relating to Patent Owner’s commercial Xenium product, which is the type of information that businesses typically keep confidential to avoid competitive harm. Patent Owner represents it has “undertaken efforts to maintain the confidentiality of this information in the parallel district court litigation,” and Patent Owner’s counsel certifies that, to the best of their knowledge, “the confidential information in EX1083 has not been published or otherwise made public.” Paper 33, 3.

Furthermore, although some portions of the redacted questions and responses do not directly disclose confidential financial information, we find that these portions are sufficiently intertwined with questions and responses containing confidential information such that good cause exists to designate as confidential the lines of questioning in their entirety.

For the above reasons, we find that Patent Owner has established good cause to seal the information redacted from Ex. 2083, and accordingly grant the parties' joint motion to seal Exhibit 1083.

Accordingly, it is hereby:

ORDERED that the Default Protective Order provided as Appendix B of the Trial Practice Guide is entered in this *inter partes* review;

FURTHER ORDERED that Patent Owner's Motion to Seal (Paper 22) is granted; and

FURTHER ORDERED that the Petitioner's Motion to Seal Exhibit 1083 (Paper 28) is granted.

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