UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GODBERSEN-SMITH CONSTRUCTION COMPANY
d/b/a GOMACO CORPORATION,
Petitioner,

v.

GUNTERT & ZIMMERMAN CONST. DIV. INC.,
Patent Owner.

Case IPR2024-00835
Patent No. 11,535,318

PETITIONER'S MOTION TO SEAL

I. Introduction

Petitioner Godbersen-Smith Construction Company d/b/a GOMACO Corporation requests that the confidential version of declaration Exhibit 1030 and documentary Exhibits 1100-1154 be sealed under 37 C.F.R. § 42.55. Good cause to seal these documents exists because a public version of Exhibit 1030 has also been filed, and the redacted information in this exhibit, along with the entireties of Exhibits 1100-1154, are sensitive, non-public corporate documents and information that a business would not make public.

II. Governing Rules and PTAB Guidance

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, but a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion.

In particular, 37 C.F.R. § 42.14 provides:

> The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

It is, however, only "confidential information" that is protected from disclosure. 35 U.S.C. § 316(a)(7) ("The Director shall prescribe regulations -- . . . providing for

protective orders governing the exchange and submission of confidential information"). In that regard, the *Office Trial Practice Guide*, 77 *Fed. Reg.* 48756, 48760 (Aug. 14, 2012) provides:

> 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.
>
> * * *
>
> *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. § 42.54.

Under 37 C.F.R. § 42.55, a "petitioner filing confidential information with a petition may, concurrent with the filing of the petition, file a motion to seal with a proposed protective order as to the confidential information."

III. Identification of Confidential Information

The confidential information in this case consists of GOMACO's internal corporate information and documents. This confidential information is contained in Exhibits 1100-1154, excerpts of which are reproduced in paragraphs 9, 11, 14, 16, and 18 of Exhibit 1030. Petitioner certifies that, to the best of Petitioner's knowledge, this information has not been published or otherwise been made public.

IV. Good Cause Exists for Sealing the Confidential Information

The Board previously granted a motion to seal the same information. *Godbersen-Smith Const. Co. v. Guntert & Zimmerman Const. Div., Inc.*, IPR2020-01698, Paper 82, 5-6 (May 19, 2022). Good cause exists for the same reasons here. The Board routinely seals confidential sales information. *See, e.g.*, *Prong, Inc. v. Yeoshua Sorias*, IPR2015-01317, Paper 32; *Cisco Systems, Inc. v. Crossroads Systems, Inc.*, IPR2014-01463, Paper 49. Here, the declaration (Ex. 1030, ¶¶ 9, 11, 14, 16, and 18) and the screenshots of database entry screens, invoices, and shipping records (Exhibits 1100-1154) contain this same type of information, namely sales and shipping information. For example, these exhibits contain specific sales information, dates of orders, dates of shipments, and recipients of those shipments. Good cause exists to seal and keep this information confidential because it includes details about GOMACO's sales, which would be valuable to GOMACO's competitors and harmful to GOMACO if made public. Accordingly, as in *Prong* and *Cisco*, the Board should seal and keep this information confidential.

The Board also seals confidential, internal, and sensitive business information. *See, e.g. Tandus Flooring, Inc. v. Interface, Inc.*, IPR2013-00333, Paper 60. Here, the distribution records and screenshots of database entry screens contained in the declaration (Ex. 1030, ¶¶ 9, 11, 14, 16, and 18) and in Exhibits

1100-1154 are internal documents that it would be competitively harmful to make public. Good cause therefore exists to seal and keep this internal company information confidential. Accordingly, as in *Tandus*, the Board should seal and keep this information confidential.

V. Proposed Protective Order

GOMACO requests entry of the Default Protective Order, which is attached to this motion as Appendix A.

VI. Conclusion

For the reasons set forth above, Petitioner respectfully requests that the Board enter the Default Protective Order and grant this motion to seal.

Respectfully Submitted,

Date: April 30, 2024

By: /Jason Stach/
Jason Stach, Reg. No. 54,464

APPENDIX A

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DEFAULT PROTECTIVE ORDER

DEFAULT PROTECTIVE ORDER

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked "PROTECTIVE ORDER MATERIAL."

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

(B) Party Representatives. Representatives of record for a party in the proceeding.

(C) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

(D) In-house counsel. In-house counsel of a party.

(E) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the

Protective Order by the person they are supporting who receives confidential information.

(F) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than in-house counsel and in-house counsel's support staff, who sign the Acknowledgement shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

4. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) Documents and Information Filed With the Board.

(i) A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The submission shall be treated as confidential and remain under seal, unless the Board determines that the documents or information do not to qualify for confidential treatment. The

information shall remain under seal unless the Board determines that some or all of the information does not qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) Documents and Information Exchanged Among the Parties. Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as "PROTECTIVE ORDER MATERIAL" and shall be produced in a manner that maintains its confidentiality.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential

information must return, or certify the destruction of, all copies of the confidential information to the producing party.

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Standard Acknowledgment for Access to Protective Order Material

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to

submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

_____

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing **Petitioner's Motion to Seal**, was served on April 30, 2024, by FedEx Priority Overnight at the following address of record for the subject patent:

IP Docketing - 22
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309

A courtesy copy has also been mailed to litigation counsel for Patent Owner at:

Paul Joseph Andre
Kramer Levin Naftalis & Frankel LLP
333 Twin Dolphin Drive
Suite 700
Redwood Shores, CA 94065

Date: April 30, 2024

By: /Daniel E. Doku/
Daniel E. Doku
Litigation Legal Assistant

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP