Filed on behalf of: Serendia, LLC

Entered: November 14, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ENDYMED MEDICAL LTD. AND ENDYMED MEDICAL, INC.,
Petitioner,

v.

SERENDIA, LLC,
Patent Owner.

Case IPR2024-00844
Patent 9,320,536

PATENT OWNER SERENDIA, LLC'S
MOTION TO FILE DOCUMENTS UNDER SEAL
AND FOR A PROTECTIVE ORDER

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Serendia, LLC ("Serendia") respectfully requests the Board authorize the filing under seal of Patent Owner's Preliminary Response and Exs. 2041, 2054, 2062, 2071, 2084, 2135, and 2147 (collectively, "Confidential Exhibits"). In addition, Patent Owner respectfully requests the Board enter the Joint Proposed Protective Order, a copy of which is filed herewith as Exhibit 2155.

A redline comparison of the Proposed Order and the Default Protective Order is also filed concurrently as Exhibit 2156. See U.S. Pat. & Trademark Off., Patent Trial and Appeal Board Consolidated Trial Practice Guide 91 (Nov. 2019) ("If the parties choose to propose a protective order deviating from the default protective order, they must submit the proposed protective order jointly along with a marked-up comparison of the proposed and default protective orders showing the differences between the two and explain why good cause exists to deviate from the default protective order.").

The Confidential Exhibits contain Patent Owner's confidential information designated as PROTECTIVE ORDER MATERIAL under the Proposed Stipulated Protective Order. See Exhibit 2155 (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.

As shown below, good cause supports this motion.

II. GOOD CAUSE SUPPORTS ENTRY OF THE PROTECTIVE ORDER

Good cause supports entry of the Proposed Stipulated Protective Order. Patent Owner's Preliminary Response relies on information that Patent Owner and has designated as confidential business information in a related proceeding at the United States International Trade Commission (ITC).

There is good cause to deviate from the Default Protective Order. As shown in Exhibit 2156, the proposed deviations from the Default Protective Order 1) modify the individuals representing the Parties that are allowed access to the information; 2) change the burden of deviating from the protective order to the party wishing to deviate from the protective order; 3) clarify the interplay between

this protective order and protective orders in other proceedings; 4) clarifies that the obligations of the protective order survive a party's termination; and 5) clerical edits to clean up issues relating to the above. These changes are intended to match the already-entered protective order between the Parties in the ITC proceeding.

A. Good cause exists to modify the individuals allowed to access the information.

In the related ITC proceeding, in-house counsel is not permitted to view confidential information of the other parties. Cf. Ex. 2156 ¶ 2. Good cause supports continuing this restriction in this IPR proceeding because the confidential information likely to be filed in this case is information previously produced in the ITC proceeding and relates to company financials and other sensitive business information. The Parties, which are competitors represented by qualified outside counsel, do not significantly benefit in this proceeding from allowing in-house counsel access to such information.

The Parties also propose removing "Parties" from the list of individuals with access to confidential information. To the extent that this provision intends to include patent owners who are natural persons, it is not relevant to this proceeding; and to the extent it extends to the non-natural Parties to this proceeding, it is unduly vague as to which natural persons within or representing the Parties should have access. These changes do not impede the public's interest in maintaining a complete and understandable file history.

B. Good cause exists to change the burden of deviating form the proposed protective order.

The Parties seek to change the party that bears the burden for allowing access to confidential information in a manner that deviates from the protective order. Ex. 2156 ¶ 3. The Parties agree that the burden should be on the party seeking disclosure to a person not covered by paragraph 2 of the protective order. *Id*. This burden allocation reflects the meaningful prior restrictions on the parties to the list in paragraph 2 and furthers the goal of confidentiality without affecting the public's interest in maintaining a complete and understandable file history.

C. Good cause exists for the other proposed deviations to the Default Protective Order.

The Parties further seek to make explicit their understanding that the protective order in this IPR proceeding does not alter any obligations in other proceedings. Ex. 2156 ¶ 6. The Parties also further seek to expressly state that persons signing the Standard Acknowledgement form are allowed to use information obtained by appropriate means outside of this IPR proceeding in the other proceeding. Ex. 2156 at 007. The existence of multiple proceedings with multiple protective orders covering the same information is good cause for these provisions, which do not impair the public's interest in maintaining a complete and understandable file history.

Finally, the Parties seek to explicitly state that the obligations of the protective order remain binding on all parties even if the proceeding is terminated as to a party. For example, if the case were terminated as to either of the two Petitioners in this proceeding, the obligations of the protective order should continue to apply to the confidential information produced by that terminated Petitioner even if the proceeding continues as to the other Petitioner. This ensures confidence that a settling Party's confidential information will remain protected by the obligations of the Protective Order after a Party settles, and it does not impact the public's interest in maintaining a complete and understandable file history.

D. Certification of Conference

Patent Owner certifies that it has conferred with Petitioner and that Petitioner has stated that it agrees to the Proposed Stipulated Protective Order (Ex. 2155).

III. 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 2135 and 2147

Patent Owner requests that the Board seal the Patent Owner Preliminary Response and Exhibits 2135 and 2147, which contain references to Patent Owner's

confidential, non-public business information. The Patent Owner Preliminary Response provides an analysis of commercial success that refers to Patent Owner's highly sensitive, non-public confidential business information, including financial data, agreements, and product development documents. Exhibits 2135 and 2147 are expert declarations that similarly provides analysis of Patent Owner's confidential information.

The Board should seal the information in the Patent Owner Preliminary Response and Exhibits 2135 and 2147 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 more easily copy their technology and development process. 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 2135 and 2147 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).

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. Documents Relating to Design and Development

Patent Owner requests that the Board seal Exhibits 2054, 2062, and 2084, which contain Patent Owner's highly sensitive, non-public technical information, including documents relating to the design and development of their products. Exhibit 2054 is contentions filed during the ITC investigation, and include commercial success and inventorship contentions that implicate confidential product development and product design information. Exhibits 2062 and 2084 are Patent Owner's technical documents filed during the ITC investigation and convey

confidential information relating to the design and development of Patent Owner's products.

The Board should seal Exhibits 2054, 2062, and 2084 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 against them. 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 unfairly to market competing products without making the same research and development investment as Patent Owner.

IV. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests the PTAB grant this motion, seal the POPR and Confidential Exhibits, and enter the Joint Proposed Protective Order file herewith as Exhibit 2155.

Respectfully submitted,

Dated: November 14, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 14th day of November, 2024, a copy of **Patent Owner Serendia, LLC's Motion To File Documents Under Seal And For A Protective Order** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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