Filed on behalf of: Orca Security Ltd.

Entered: April 7, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WIZ, INC.,
Petitioner,

v.

ORCA SECURITY LTD.,
Patent Owner.

IPR2024-00865
U.S. Patent 11,693,685 B2

PATENT OWNER ORCA SECURITY LTD.'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 Orca Security Ltd. ("Orca" or "Patent Owner") respectfully requests the Board authorize the filing under seal of the Patent Owner Response and Exhibits 2073, 2074, 2300-2304, 2306-2309, 2312, and 2400-2428 (collectively, "Confidential Exhibits").[1] In addition, Orca respectfully requests the Board enter the Joint Proposed Protective Order, a copy of which is filed herewith as Exhibit 2161.

A redline comparison of the Proposed Order and the Default Protective Order is also filed concurrently as Exhibit 2162. *See* U.S. Pat. & Trademark Off., Patent Trial and Appeal Board Consolidated Trial Practice Guide 91 (Nov. 2019) ("Consolidated Trial Practice Guide") ("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.").

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[1] Orca will file redacted copies of the Patent Owner Response and at least Ex. 2073 (both of which require at least some redactions by Wiz to protect Wiz's protective order material) as soon as it confers with Wiz and receives Wiz's redactions.

The Confidential Exhibits contain Orca's confidential information and information Wiz designated as PROTECTIVE ORDER MATERIAL under the Proposed Stipulated Protective Order. *See* Exhibit 2161 (Proposed Stipulated Protective Order). The designated materials Orca seeks to seal include confidential technical and financial information, including financial data, design documents, and business information. These materials relate to the core of Orca's business. Public disclosure of this information would significantly harm Orca's competitive positions because it would allow competitors to access sensitive technical information.

Orca 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. The Patent Owner Response relies on information that Orca and Wiz have designated as confidential business information in a related district court proceeding.

There is good cause to deviate from the Default Protective Order. As shown in Exhibit 2162, the proposed deviations from the Default Protective Order: 1) identifies two levels of protective order information, including CONFIDENTIAL information and CONFIDENTIAL – ATTORNEYS' EYES ONLY information; 2) more precisely defines Outside Counsel as able to receive CONFIDENTIAL information rather than "Party Representatives"; 3) specifies the conditions under which information is to be designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES ONLY; 4) specifies the individuals that are allowed to access CONFIDENTIAL – ATTORNEYS' EYES ONLY information; 5) provides for procedure in the event of inadvertent disclosure of protective order material; 6) provides a bar on patent prosecution to individuals accessing CONFIDENTIAL – ATTORNEYS' EYES ONLY that explicitly excludes post-grant and re-examination proceedings; and 7) specifies the scope of documents that must be returned or destroyed after final disposition of the proceeding. These changes are intended to match the already-entered protective order between the Parties in the district court.

A. Good cause exists to include two levels of protective order material.

The default protective order appears to allow in-house counsel of a party to obtain protective order material from the other party. *Cf.* Ex.2162 ¶2. In the related district court proceeding, CONFIDENTIAL – ATTORNEYS' EYES

ONLY information cannot be viewed by in-house counsel. *Cf.* Ex.2162 ¶6. Good cause supports continuing this restriction in this IPR proceeding because the confidential information filed or likely to be filed in this case is, at least in part, information previously produced in the district court 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.

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

The Parties further seek to make explicit the procedure for recovering inadvertently-disclosed material. Ex.2162 ¶9. Good cause supports this addition because the provision will help to avoid disputes among the Parties in this case where dozens of designated documents are in the record, thousands have been produced in the district court litigation, and inadvertent production can be foreseen.

The Parties also seek to include a prosecution bar that explicitly allows for representation in post-grant proceedings. Ex.2162 ¶10. Good cause supports this addition because such a bar exists in the district court protective order, where both parties are represented by the same law firms as in this proceeding, and the Parties are competitors. Further, the prosecution bar here is narrowly tailored to attorneys and persons who obtain, receive, have access to, or otherwise learn the other party's CONFIDENTIAL – ATTORNEYS' EYES ONLY information.

Additionally, Orca is not seeking to amend the claims in this case, so the concerns against prosecution bars in the Consolidated Trial Practice Guide are reduced.

C. Certification of Conference

Orca certifies that it has conferred with Wiz and that Wiz 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." Consolidated Trial Practice Guide 19. 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 Orca to file the Patent Owner Response and Confidential Exhibits under seal. As described in more detail below, the information in these materials that Orca 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 Orca'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 Orca.

In order to strike the appropriate balance and ensure that only truly confidential information is being sealed, Orca provides the following detailed descriptions of the information in the Patent Owner 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 Response and Exhibits 2073 and 2074

Orca requests that the Board seal the Patent Owner Response and Exhibits 2073 and 2074, which contain references to Orca's confidential, non-public business information. The Patent Owner Response and Exhibit 2073 also contain references to documents that Wiz has designated as confidential business information. The Patent Owner Response provides an analysis of copying and commercial success that refers to confidential business information, including financial data, market research, and internal strategy emails. Exhibit 2073 is an expert declaration that similarly provides analysis of designated confidential information. Exhibit 2074 is a declaration by an employee of Orca's, and the inventor of the Challenged Patent, and provides analysis of Orca's confidential information.

The Board should seal the information in the Patent Owner Response and Exhibits 2073 and 2074 for several reasons. First, they include non-public, confidential information that is highly sensitive to Orca. For example, the technical information is the result of significant resources by Orca in developing, maintaining, and improving the technology underlying its products; public disclosure of this information would allow competitors more easily copy their technology and development process. Second, disclosure of this information could cause Orca serious competitive harm by, for example, providing competitors with a strategic and unfair business advantage against it in the marketplace. Third, Orca will submit (with Wiz's input) redacted versions of the Patent Owner Response and Exhibits 2073 and 2074 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." Consolidated Trial Practice Guide 19.

B. Financial Information

Orca requests that the Board seal Exhibit 2312, which contains Orca's highly sensitive, non-public financial information, including revenues.

The Board should seal Exhibit 2312 because of the significant potential harm that would come from disclosure. First, the financial information in this exhibit is highly sensitive to Orca. Second, disclosure of this financial information

could cause Orca serious competitive harm by, for example, providing competitors with a strategic and unfair advantage.

C. Documents Relating to Design, Development, and Marketing

Orca requests that the Board seal Exhibits 2300-2304, 2306-2309, which contain Orca's highly sensitive, non-public technical information, including documents relating to the design and development of their products. Exhibits 2300, 2301, 2304, include proprietary documentation about Orca's product. Exhibits 2302-2303 are emails that contain technical information about Orca's products. Exhibits 2306-2307 are emails that contain business-sensitive information. Exhibits 2308-2309 contain sensitive technical information about cloud computing platforms. The Board should seal Exhibits 2300-2304 and 2306-2309 because of the significant potential harm that would come from public disclosure. First, the technical information and information relating to the design of Orca's products is highly sensitive. Second, disclosure of this information could cause Orca serious competitive harm by, for example, providing competitors with a strategic and unfair advantage against them. Orca 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 Orca's technology and allow them unfairly to market competing products without making the same research and development investment as Orca.

Orca also requests that the Board seal Exhibits 2400-2428, which Wiz has designated as confidential business information. These documents also contain non-public technical information relating to the design and functionality of Orca's products.

IV. CONCLUSION

For the foregoing reasons, Orca respectfully requests the Board grant this motion, seal the Patent Owner Response and Confidential Exhibits, and enter the Joint Proposed Protective Order file herewith as Exhibit 2161.

Respectfully submitted,

Dated: April 7, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 7th day of April, 2025, a copy of **Patent Owner Orca Security Ltd.'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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