UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

URT UMWELT UND RECYCLINGTECHNIK GMBH
Petitioner,
v.

DUESENFELD GMBH.
Patent Owner.

Inter Partes Review No. IPR2024-00887
U.S. Patent No. 11,050,097

PATENT OWNER'S MOTION TO SEAL AND FOR ENTRY OF A PROTECTIVE ORDER PURSUANT TO 37 C.F.R. § 42.54

Patent Owner, Duesenfeld GmbH, hereby moves for entry of the Protective Order appended below as **Appendix A** and further moves to seal its Patent Owner Response and Exhibits 2035, 2036, 2040, 2041, 2043, 2044, 2046, 2047, 2049, and 2050, which are being filed concurrently with this motion. Pursuant to 37 C.F.R. § 42.54(a), Patent Owner met and conferred with Petitioner URT Umwelt und Recyclingtechnik GmbH ("URT" or "Petitioner"), regarding this motion. Patent Owner was unable to secure URT's agreement to utilize the Board's Default Protective Order. URT does not oppose sealing the documents identified in Section II, *infra*.

I. Motion for Entry of a Protective Order

Patent Owner respectfully moves for entry of the Board's Default Protective Order, as found in Appendix B of the Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019 ("CTPG"). A copy of the Board's Default Protective Order is included below as Appendix A. Pursuant to the CTPG, Patent Owner certifies that it accepts and agrees to the terms of the Board's Default Protective Order.

II. Motion to Seal

The CTPG states that "a document or thing will be made publicly available, unless a party files a motion to seal that is then granted by the Board." CTPG at 19; *see also* 35 U.S.C. §316(a)(7). "The document or thing will be protected on receipt

of the motion and remain so, pending the outcome of the decision on motion." *Id.* A party moving to seal must show "good cause" for the relief requested. 37 C.F.R. § 42.54(a). "[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 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 Research, Ltd.*, IPR2017-01053, Paper 27 at 4 (P.T.A.B. Jan. 19, 2018) (informative).

Patent Owner moves to seal its Patent Owner Response and Exhibits 2035, 2036, 2040, 2041, 2043, 2044, 2046, 2047, 2049, and 2050, which are being filed concurrently with this motion. Good cause exists for maintaining the Patent Owner Response and Exhibits under seal, as detailed below.

A. Exhibits 2046 and 2047 (*i.e.*, Confidential Financial Information).

There is good cause for sealing Exhibits 2046 and 2047 (English translation). These exhibits detail Patent Owner's non-public preliminary financial statements from 2021 and 2022. Patent Owner believes it is important for the Board to consider this information to support, *inter alia*, Patent Owner's positions regarding objective indicia of non-obviousness, which has been described as "the most probative and cogent evidence in the record." *PPC Broadband, Inc. v. Iancu*,

739 F. App'x 615, 624 (Fed. Cir. 2018). This information is treated as confidential by Patent Owner, and would result in competitive harm to Patent Owner should this information be disclosed publicly, as it would, *inter alia*, give potential business partners of Patent Owner an advantage in contract negotiations. Accordingly, Courts routinely seal this information. *Apple Inc. v. Samsung Elecs*. Co., 727 F.3d 1214, 1225 (Fed. Cir. 2013). As such, the interest in confidentiality outweighs the public interest in having an open record regarding this information. These exhibits should therefore be sealed.

B. Exhibits 2049 and 2050 (*i.e.*, Confidential Licensing Agreements).

There is also good cause for sealing Exhibits 2049 and 2050. Both exhibits are non-public license agreements between Patent Owner and a third party, to whom Patent Owner is under confidentiality obligations to regarding, *inter alia*, the terms of the licensing information referenced therein. Accordingly, these exhibits are of the type that is "truly confidential." Patent Owner believes it is important for the Board to consider this information to support, *inter alia*, Patent Owner's positions regarding objective indicia of non-obviousness, which has been described as "the most probative and cogent evidence in the record." *See PPC Broadband, Inc.*, 739 F. App'x at 624. However, should these documents become public, Patent Owner, as well as the third parties, would be harmed. As such, such documents are routinely sealed. *Uniloc USA, Inc. v. Apple Inc*., 25 F.4th 1018,

1024 (Fed. Cir. 2022). Indeed, the CAFC has recognized that the public has "no public interest" in licensing information. *Id.* ("Absent an issue raised by the parties concerning license rights and provisions, there is no public interest or entitlement to information concerning consideration for the grant of licenses. The parties are in agreement that license information here should be sealed and protected."). As such, the interest in confidentiality outweighs the public interest in having an open record regarding this information. These exhibits should therefore be sealed.

C. Exhibits 2041, 2043, 2044 and 2036 (*i.e.*, Confidential Technical Information).

There is good cause for sealing Exhibits 2041, 2043, 2044 and 2035. All of these documents contain and disclose Patent Owner's confidential information, including trade secret information, concerning Patent Owner's proprietary process for battery processing. Exhibit 2041 is a set of graphs showing the temperature and pressure conditions in the dryer at Patent Owner's Wendeburg plant. Exhibits 2043 and 2044 (English translation) is a certification that contains Duesenfeld's confidential process information. Exhibit 2036 is a claim chart which discloses information from several Patent Owner internal and confidential documents which also disclose Patent Owners proprietary information. Patent Owner believes that this information will be useful to the Board for numerous reasons, as further outlined in Patent Owners' Response (filed contemporaneously herewith). Further, such information is routinely sealed. *PACT XPP Schweiz AG v. Intel Corp.*, No.

1:19-CV-01006-JDW, 2024 WL 3539018, at *1 (D. Del. May 9, 2024) ("Intel has demonstrated that the documents that it seeks to place under seal overcome the presumption of public access to judicial materials. These documents contain descriptions of and references to system architecture, technical specifications, and internal component descriptions. This highly technical, non-public information is the type of confidential business information that judges will protect from disclosure.") As such, the interest in confidentiality once more outweighs the public interest in having an open record regarding this information. This exhibit, as well as the claim charts, should therefore be sealed.

D. Exhibit 2035 (*i.e.*, Confidential Employment Information).

There is good cause for sealing Exhibit 2035. This document discloses the details of certain relevant technical work done by Patent Owner's expert, Vani Dantam, for entities to whom Mr. Dantam owes a duty of confidentiality. Mr. Dantam has executed Non-disclosure Agreements with each of these entities, which significantly limits Mr. Dantam's ability to disclose the details of his employment. The public interest in accessing such confidential information is exceedingly low in contrast to the high value such information will have to the Board in assessing the weight ascribed to Mr. Dantam's declaration. Accordingly, the interest in confidentiality again outweighs any public interest in having an open

record regarding this information, and this Appendix should therefore remain under seal.

E. Patent Owner's Response, Exhibit 2040 (*i.e.*, Documents that Incorporate, Explain, or Otherwise Disclose Confidential Information).

Finally, good cause exists for sealing the Patent Owner's Response as well as Exhibit 2040 (*i.e.*, the Declaration of Lydia Grote ("Grote Decl.")). The Patent Owner's Response and the Grote Decl., discuss, quote, cite, and otherwise disclose the documents and information discussed in Section II (A-D), *supra.* Accordingly, there is good cause to seal these documents for the same reasons as discussed above.

Further, Patent Owner is concurrently filing redacted versions of the Patent Owner's Response, as well as redacted versions of several of the exhibits at issue, such that the public filings only include redactions of those limited portions that reflect confidential information. Patent Owner submits that its underlying arguments and evidence in the Patent Owner Response remains clearly discernible from the redacted, public versions of the filings. Accordingly, Patent Owner submits that there is good cause to seal the Patent Owner Response and Exhibits.

CONCLUSION

For the forgoing reasons, Patent Owner respectfully requests that the Board grant this motion to seal and for entry of a protective order.

Date: February 12, 2025

Respectfully submitted,

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ATTORNEYS FOR PATENT OWNER DUESENFELD GMBH

CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. § 42.6(e), the undersigned certifies that on the 12th day of February, 2025, a complete and entire copy of this motion and related documents were served on Petitioner via electronic mail at the following addresses:

Brian Kauffman, Reg. No. 63199
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Dated: February 12, 2025

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Registration No. 48632

ATTORNEY FOR PATENT OWNER, DUESENFELD GMBH

Appendix A

DEFAULT PROTECTIVE ORDER

The following Default Protective Order will govern the filing and treatment of confidential information in the proceeding:

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 those persons identified above in (d)(2)(A)–(E), 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 and after signing the Acknowledgment. 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 documents or information shall remain under seal unless the Board determines that some or all of it 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.

(k) Standard Acknowledgement of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

[CAPTION]

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.

[Signature]