

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOMBARDIER RECREATIONAL PRODUCTS, INC.,
Petitioner,

v.

MHL CUSTOM, INC.,
Patent Owner.

IPR2024-01107 (Patent 9,586,659 B2)
IPR2024-01108 (Patent 9,359,044 B2)

Before BART A. GERSTENBLITH, KEVIN W. CHERRY, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Motion to Seal and
Request for Entry of the Default Protective Order
37 C.F.R. §§ 42.14, 42.54

Patent Owner filed a “Motion to Seal and Request for Entry of Default Protective Order.” Paper 9 (“Motion” or “Mot.”).¹ Patent Owner moves to seal the Patent Owner Preliminary Response (Paper 8) and Exhibit 2004 (the First Declaration of Nicholas Leason, filed on Oct. 29, 2024). Patent Owner also seeks entry of the Board’s Default Protective Order. Mot. 1; Ex. 2033. Patent Owner has provided redacted copies of the Patent Owner Preliminary Response (Ex. 2034) and Exhibit 2004 (Ex. 2035).

Petitioner did not file an opposition to the Motion.

For the reasons discussed below, we *grant* Patent Owner’s Motion.

The record of an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. Only “confidential information” may be protected against public disclosure. 35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54. The Board observes a strong public policy in favor of making information filed in *inter partes* review proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Rsch., Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes a sufficient showing 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

¹ Similar papers were filed in both proceedings. For simplicity, all citations are to the record in IPR2024-01107.

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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, Paper 27 at 3–4; *see also Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB Apr. 6, 2015) (requiring a showing that information has not been “excessively redacted”).

In the Motion, Patent Owner seeks to seal the Preliminary Response and Exhibit 2004, because they contain sensitive non-public information. Mot. 1. Patent Owner explains that the Preliminary Response and Exhibit 2004 contain “confidential and sensitive business information, and in particular, revenue, sales volume, and market share information related to Patent Owner’s products.” *Id.* at 4. Patent Owner also states that “Patent Owner would suffer concrete harm from the public disclosure of the confidential information sought to be sealed.” *Id.* And “public disclosure of revenue, sales volume, and market share information related to Patent Owner’s products that is included in the unredacted versions of Patent Owner’s Preliminary Response and the First Declaration of Nicholas Leason (EX2004) could undermine Patent Owner’s business and competitiveness in the market and provide information that competitors could use to Patent Owner’s detriment.” *Id.*

Based on our review of Exhibit 2004 and the Preliminary Response, we are persuaded that good cause exists to seal Exhibit 2004 and the Preliminary Response because they contain confidential, potentially sensitive information, because Patent Owner would be harmed by not sealing the information, and because the interest in maintaining the information as confidential outweighs the public interest in having the information unsealed. We also note that Patent Owner has mitigated any

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harm to the public by providing redacted copies of both documents.

Accordingly, we conclude that good cause exists to maintain the Preliminary Response and Exhibit 2004 under seal.

Accordingly, it is

ORDERED that Patent Owner's Motion to Seal is *granted* with respect to the Patent Owner Preliminary Response (Paper 8) and Exhibit 2004; and

FURTHER ORDERED that the Default Protective Order (Ex. 2033) is entered in the above-captioned proceeding.

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