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Paper 10
Date: January 6, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARASHI VISION (U.S.) LLC (D/B/A INSTA360),
Petitioner,

v.

GOPRO, INC.,
Patent Owner.

IPR2024-00984 (Patent 10,015,413 B1)
IPR2024-01052 (Patent 11,336,832 B1)
IPR2024-01164 (Patent 10,958,840 B2)
IPR2024-01165 (Patent 10,958,840 B2)[1]

Before WILLIAM V. SAINDON, NABEEL U. KHAN, and
BRIAN D. RANGE, *Administrative Patent Judges*.

PER CURIAM.

ORDER
Granting Patent Owner's Motions to Seal
37 C.F.R. §§ 42.14, 42.54

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[1] This Order addresses similar issues in the above-identified proceedings. We issue one Order to be filed in each proceeding. The parties are not authorized to use this caption without express permission of the Board.

I. INTRODUCTION

Patent Owner filed a Motion to Seal (Paper 8[2]) in each of the above-identified proceedings. In each proceeding, Patent Owner moves to seal its Preliminary Response (Paper 9), the Declaration of Hassan Foroosh, Ph.D. (Ex. 2001), and other exhibits[3]. Paper 8, 2. Patent Owner requests entry of a proposed Protective Order that modifies the Board's Default Protective Order[4]. *See* Paper 8, 1; Ex. 2050 (redline version of the Protective Order with modifications to the Board's Default Protective Order); Ex. 2051 (clean version of the Protective Order).[5]

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[2] For expediency, we cite to papers filed in IPR2024-00984 unless otherwise noted. Similar papers were filed in the other above-identified proceedings.

[3] Specifically, Patent Owner moves to seal Exhibits 2004 (IPR2024-01164, IPR2024-01165), 2008 (IPR2024-01052), 2015 and 2016 (IPR2024-01164, IPR2024-01165), and 2018 and 2019 (IPR2024-00984, IPR2024-01052).

[4] Patent Trial and Appeal Board Consolidated Trial Practice Guide, App. B (Nov. 2019) ("Trial Practice Guide"), *available at* http://www.uspto.gov /TrialPracticeGuideConsolidated.

[5] Patent Owner did not file the Protective Order concurrently with the respective Motions in IPR2024-00984 and IPR2024-01052 (*see* 37 C.F.R. § 42.54 (a) ("A party may file a motion to seal where the motion to seal contains a proposed protective order . . . ."); *see also* Trial Practice Guide 19, 113–114 ("The party filing a Motion to Seal shall include with its supporting papers a copy of a proposed Protective Order . . . .")), but indicated that "the parties are still conferring" and that it would "subsequently seek leave to file the proposed Protective Order once the parties have come to an agreement." Paper 8, 1. As the proposed Protective Order (Ex. 2051) has now been filed in both IPR2024-00984 and IPR2024-01052, any issue regarding its absence when the Motions were filed is moot.

II. MOTIONS TO SEAL

The record of an *inter partes* review shall be made available to the public, except as otherwise ordered, and any documents 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 its proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Research, 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). For a sufficient showing for a motion to seal, the Board has required 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, Paper 27 at 3–4; *see also Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB April 6, 2015) (requiring a showing that information has not been "excessively redacted").

Patent Owner explains that the underlying exhibits sought to be protected "contain highly confidential and non-public information concerning business, financial, and strategy information of Patent Owner."

Paper 8, 2. Patent Owner also explains that the relevant exhibits "were designated in [the parallel ITC investigation] as 'Confidential Business Information Subject to Protective Order,' are subject to the applicable Protective Order from the parallel litigation, and should be similarly protected here." *Id.* Further, Patent Owner states that its Preliminary Response (Paper 9) and the Declaration of Hassan Foroosh, Ph.D. (Ex. 2001) "cite, describe, and quote" the underlying exhibits sought to be protected. Paper 8, 2.

Petitioner has not opposed the Motions.

Upon review of Patent Owner's Motions, we are persuaded that good cause exists to seal the papers and exhibits identified in Patent Owner's Motions. In particular, Exhibits 2004 (IPR2024-01164, IPR2024-01165), 2008 (IPR2024-01052), 2015 and 2016 (IPR2024-01164, IPR2024-01165), and 2018 and 2019 (IPR2024-00984, IPR2024-01052) appear to contain truly confidential information that Patent Owner certifies has not been made public (Paper 8, 2). Moreover, Patent Owner has provided redacted versions of its Preliminary Response (Paper 7) and the relevant Declaration (Ex. 2001) in each case, with redactions that appear narrowly tailored so as to protect confidential information while balancing the public interest in an open record.

III. MODIFIED PROTECTIVE ORDER

The Board may, for good cause, issue a protective order "to protect a party or person from disclosing confidential information." 37 C.F.R. § 42.54(a). A protective order is not entered by default but must be

proposed by one or more parties and must be approved and entered by the Board. Trial Practice Guide 19–20, 107. The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a Default Protective Order. *See id.* 19–20, 107–122. The parties may propose modifications to the Default Protective Order and the Board will generally accept such proposed changes if they are consistent with the integrity and efficient administration of the proceedings. *Id.* at 115.

Patent Owner's proposed Protective Order specifies a "PROTECTIVE ORDER MATERIAL—ATTORNEYS' EYES ONLY" level of protection for confidential information, thus modifying the Board's Default Protective Order by restricting parties from access to confidential information, and limiting access to party representatives who are "Outside counsel of record for a party in the proceeding." Ex. 2050, 1.

After reviewing the proposed modifications to the Board's Default Protective Order in Patent Owner's proposed Protective Order, we determine that the changes are consistent with the integrity and efficient administration of the proceedings. In particular, the modifications follow accepted practice before the Board (*see* Trial Practice Guide 115 ("[T]he parties may agree to modify the Default Protective Order to provide additional tiers or categories of confidential information, such as 'Attorney's Eyes Only.' The Board will presumptively accept agreed-to changes that provide additional categories of confidentiality as long as they are reasonable . . . .")), and appear to be appropriate in these proceedings, given the "highly confidential" information contained in the underlying exhibits sought to be protected (Paper 8, 2). Accordingly, we enter Patent Owner's proposed Protective Order.

IV. ORDER

Accordingly, it is

ORDERED that Patent Owner's Motions to Seal are *granted* in the above-identified proceedings.

FURTHER ORDERED that Patent Owner's proposed Protective Order (Ex. 2051) is *entered* in each of the above-identified proceedings;

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