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Paper 31
Entered: June 2, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WIZ, INC.,
Petitioner,

v.

ORCA SECURITY LTD.,
Patent Owner.

IPR2024-00863 (Patent 11,663,031 B2)
IPR2024-00864 (Patent 11,663,032 B2)
IPR2024-00865 (Patent 11,693,685 B2)
IPR2024-01109 (Patent 11,726,809 B2)
IPR2024-01190 (Patent 11,740,926 B2)
IPR2024-01191 (Patent 11,775,326 B2)[1]

Before MICHAEL R. ZECHER, GARTH D. BAER, and
SCOTT RAEVSKY, *Administrative Patent Judges.*

ZECHER, *Administrative Patent Judge*.

ORDER
Granting Patent Owner's Motions to Seal and Entry of Protective Order
37 C.F.R. §§ 42.14 and 42.54

[1] This Order addresses an issue that is identical in all six proceedings. We, therefore, exercise our discretion to issue one Order to be filed in each proceeding. The parties, however, are not authorized to use this style heading in any subsequent papers.

I. INTRODUCTION

Patent Owner, Orca Security Ltd., filed a non-public, unredacted version of a Patent Owner Response (Paper 32 ("PO Resp.")), and a Motion to Seal requesting to seal Exhibits 2073, 2074, 2300–2304, 2306–2309, 2312, 2400–2422, and 2425–2428, together with certain portions of the Patent Owner Response and accompanying declarations that reference these exhibits (Paper 31, "Mot.").[2] Orca also filed a Joint Proposed Protective Order that deviates from the Board's default protective order. Ex. 2161; *see also* Ex. 2162 (redline comparison between the Board's default protective order and the parties' Joint Proposed Protective Order). For the reasons we discuss below, we *grant* the Motions to Seal and enter the Joint Proposed Protective Order in each proceeding.

II. STANDARD OF REVIEW

There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review ("IPR") that determines the patentability of claims in an issued patent and, therefore, impacts the rights of the public. Under 35 U.S.C. § 316(a)(1), the default rule is that all papers and exhibits filed in an IPR are open and available for access by the public. A party may, however, file papers or exhibits under seal together with a motion to seal, whereupon

[2] Unless otherwise noted, all references are to the Motion to Seal, Patent Owner Response, exhibits Orca seeks to maintain under seal, and Joint Proposed Protective Order that were filed in IPR2024-00863. Similar papers and exhibits were filed IPR2024-00864, IPR2024-00865, IPR2024-01109, IPR2024-01190, and IPR204-01191.

the papers or exhibits will be treated as sealed pending the outcome of the motion. *Id.*

Only "confidential information" may be protected from disclosure. 35 U.S.C. § 316(a)(7) ("The Director shall prescribe regulations . . . providing for protective orders governing the exchange and submission of confidential information"). In that regard, the Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) ("Consolidated Trial Practice Guide"),[3] provides the following guidance:

> 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.
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> * * *
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> 2. Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. 37 C.F.R. § 42.54.

Consolidated Trial Practice Guide at 19.

As the party seeking to protect confidential information, Orca has the burden of proof to show that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). The standard for granting a motion to seal is "for good cause." 37 C.F.R. § 42.54. A motion to seal must include a proposed protective order and a certification that the moving party—Orca—has in good faith conferred or attempted to confer with the other affected party—Petitioner,

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[3] *Available at* https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?MURL=TrialPracticeGuideConsolidated

Wiz, Inc. ("Wiz")—in an effort to come to an agreement as to the scope of the proposed protective order. *Id.*

In *Argentum Pharmaceuticals LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative) ("*Argentum*"), the Board set forth the following four factors it will consider when determining whether the moving party has shown good cause to seal confidential information:

> 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, Paper 27 at 4.

III. ANALYSIS

Orca contends that it satisfied the good cause standard for granting the Motions to Seal because the information that Orca seeks to seal falls into one of the following two 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)." Mot. 5. More specifically, Orca argues that its Patent Owner Response and the accompanying declarations that are Exhibits 2073 and 2074 "provide[] an analysis of copying and commercial success that refers to confidential business information, including financial data, market research, and internal strategy emails." *Id.* at 6. Orca asserts that certain information

in the Patent Owner Response and Exhibits 2073 and 2074 should remain under seal because it "include[s] non-public, confidential information that is highly sensitive to Orca," "the disclosure of this information could cause Orca serious competitive harm," and Orca will submit public, redacted versions of the Patent Owner Response and Exhibits 2073 and 2074 to 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." *Id.* at 7 (quoting Consolidated Trial Practice Guide at 19).

Orca further argues that Exhibit 2312 "contains Orca's highly sensitive, non-public financial information, including revenues," that should remain under seal because this financial information is "highly sensitive," and the "disclosure of this financial information could cause Orca serious competitive harm." Mot. 7–8. Orca argues that Exhibits 2300–2304, 2306–2309, 2400–2422, and 2425–2428 contain technical and business-related information that pertains to the "design and development of [Orca's] products," which, once again, should remain under seal because it is "highly sensitive," and the "disclosure of this [technical and business-related] information could cause Orca serious competitive harm." *Id.* at 8.

After reviewing Exhibits 2073, 2074, 2300–2304, 2306–2309, 2312, 2400–2422, and 2425–2428, together with the relevant quotes, discussions, and citations in the non-public, redacted version of the Patent Owner Response, we agree that they contain business confidential information. We also are mindful of Orca's representation that there is a genuine need to rely on this information to demonstrate objective indicia of non-obviousness

(i.e., secondary considerations). *See* PO Resp. 35–62. Based on these particular circumstances, we find good cause to *grant* Orca's Motions to Seal.

We now consider whether to enter the parties' proposed protective order. Based on our review of the Joint Proposed Protective Order, it appears to deviate from the Board's default protective order in several ways. *See* Mot. 2–3; Ex. 2162. One way the Joint Proposed Protective Order deviates from the Board's default protective order is by providing the following two levels of protective order material: (1) CONFIDENTIAL information; and (2) CONFIDENTIAL – ATTORNEYS' EYES ONLY information. Mot. 3. According to Orca, CONFIDENTIAL – ATTORNEYS' EYES ONLY information "cannot be viewed by in-house counsel." *Id.* at 3–4 (citing Ex. 2162 ¶ 6). Orca argues that good cause exists for continuing this restriction from the district court case in these IPRs because it is consistent with the protective order entered in the district court case, and the business confidential information filed in these IPRs "is, at least in part, information previously produced in the district court [that] relates to company financials and other sensitive business information." *Id.*

Another way the Joint Proposed Protective Order deviates from the Board's default protective order is by providing a procedure for recovering material that was disclosed inadvertently. Mot. 3–4 (citing Ex. 2162 ¶ 9). Orca argues that good cause exists to support this additional provision because it "will help to avoid disputes among the [p]arties" in these IPRs where numerous documents are now of record and "inadvertent production can be foreseen." *Id.* at 4. Yet another way the Joint Protective Order

deviates from the Board's default protective order is by providing a prosecution bar to individuals accessing CONFIDENTIAL – ATTORNEYS' EYES ONLY information. *Id.* at 3–4 (citing Ex. 2162 ¶ 10). Orca argues that good cause exists to support this additional provision because it is consistent with the protective order entered in the district court case, the prosecution bar is tailored narrow to only those individuals accessing CONFIDENTIAL – ATTORNEYS' EYES ONLY information, and Orca is not seeking to amend the involved claims in these IPRs. *Id.* at 4–5.

Orca represents that it conferred with Wiz and Wiz agreed to the Joint Proposed Protective Order. Mot. 5 (citing Ex. 2155).[4] Because the parties agree that the Joint Proposed Protective Order will govern the disclosure of the information filed under seal, we enter this proposed protective order in each proceeding.

III. ORDER

Accordingly, it is hereby:

ORDERED that Orca's Motions to Seal are *granted*;

FURTHER ORDERED that the Joint Proposed Protective Order is entered in each proceeding;

FURTHER ORDERED that all the papers and exhibits filed under seal will continue to be maintained under seal;

FURTHER ORDERED that, no later than ten (10) business days of entry of this Order, Orca must file public, redacted versions of the following

[4] There is no Exhibit 2155 in the record of IPR2024-00863. We understand from Orca's Motion for Additional Discovery (Paper 20 at 3–4) that the parties agreed to the Joint Proposed Protective Order in the email thread that is Exhibit 2059.

papers and exhibits: (1) Paper 32, Exhibit 2073, and Exhibit 2074 in IPR2024-00863; (2) Paper 32, Exhibit 2073, and Exhibit 2074 in IPR2024-00864; (3) Paper 32, Exhibit 2073, and Exhibit 2074 in IPR2024-00865; (4) Paper 30, Exhibit 2073, and Exhibit 2074 in IPR2024-01109; (5) Paper 28, Exhibit 2073, and Exhibit 2074 in IPR2024-01190; and (6) Paper 29, Exhibit 2073, and Exhibit 2074 in IPR2024-01191.

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