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Paper 62
Date: November 6, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVANOS MEDICAL, INC.,
Petitioner,

v.

STRATUS MEDICAL, LLC,
Patent Owner.

IPR2024-01209 (Patent 10,966,782)
IPR2024-01210 (Patent 10,736,688)
IPR2024-01211 (Patent 10,736,688)
IPR2024-01212 (Patent 10,925,664)[1]

Before SUSAN L. C. MITCHELL, MICHAEL J. FITZPATRICK, and ARTHUR M. PESLAK, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

ORDER
Entering Protective Order, Granting Certain Motions to Seal, and Granting In Part Certain Other Motions to Seal
37 C.F.R. § 42.14, 42.54

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[1] This Order is being entered in each of the four proceedings identified. The proceedings have not been consolidated. The parties may not file papers captioned for multiple proceedings unless authorized to do so.

Petitioner, Avanos Medical, Inc., has two pending motions to seal in each proceeding. Papers 34 and 60.[2] Patent Owner, Stratus Medical, LLC, has three pending motions to seal in each proceeding. Papers 18, 35, and 47. Of these five motions per proceeding, only Patent Owner's first Motion to Seal (Paper 18; "Mot.") currently stands opposed. *See* Paper 20 ("Opp.").

Both parties have agreed to a proposed protective order, which was submitted as Exhibit 2017.

We grant the unopposed Motions in their entirety, grant the opposed Motion in part, and enter the proposed protective order.

I. DISCUSSION

A. Governing Law

Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public. However, the same statute specifically contemplates exceptions to this default rule, and it instructs the Director to create regulations providing for the sealing of documents and entry of protective orders. *Id.* at § 316(a)(1) and (6). The Director has done so via 37 C.F.R. §§ 42.14 and 42.54, which we apply below.

II. 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.

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[2] We cite to papers in IPR2024-01210 as exemplary for all four cases identified in the caption above.

§ 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. Consolidated Trial Practice Guide ("Consolidated Practice Guide")[3] at 19–20, 107. The Consolidated Practice Guide sets forth specific guidelines on proposing a protective order and provides a Default Protective Order. *See id.* at 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.

A red-lined version of the proposed Protective Order shows how it deviates from the Default Protective Order. Ex. 2018. It deviates merely by creating a second level of protection for documents marked "OUTSIDE COUNSEL ONLY" and associated provisions (who may access such information and that a party must set forth the reasons for such elevated restrictions). *Id.* Because the parties are in agreement and because it includes all of the provisions of the Default Protective Order and differs only in creating a second level of protection, we enter the proposed Protective Order (i.e., Ex. 2017).

III. MOTIONS TO SEAL

The standard for granting a motion to seal is "good cause." *See* 37 C.F.R. § 42.54 ("The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information."). The

[3] Available at https://www.uspto.gov/TrialPracticeGuideConsolidated.

moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c).

Unopposed Motions to Seal

The parties' unopposed motions to seal (e.g., with respect to IPR2024-01210: Papers 34 and 60 by Petitioner and Papers 35 and 47 by Patent Owner) are granted, as we are persuaded good cause exists for sealing the subject information.

Patent Owner's First Motion to Seal (Opposed by Petitioner)

Patent Owner First Motion to Seal seeks to protect from public disclosure portions of a declaration by Cody Jorgensen (Ex. 2015) and portions of its Patent Owner Response (Paper 15). Mot. 1. As to the Jorgensen declaration, Patent Owner seeks to protect paragraphs 12, 14–28, 30, 47, and 49, which are redacted in the publicly filed version of the declaration. Mot. 1; Ex. 2016 ¶¶12, 14–28, 30, 47, and 49. As to the Patent Owner Response, Patent Owner seeks to protect portions of pages 17, 18, and 68–72, which are redacted in the publicly filed version of the Patent Owner Response. Mot. 1; Paper 16, at 17, 18, and 68–72.[4]

Patent Owner argues that good cause exists for sealing the redacted information because it is sales and market share data that are not public, Patent Owner being a private company. Mot. 3.

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[4] The Motion also identifies page 67 of the Patent Owner Response, but the publicly filed version of the Patent Owner Response does not contain any redactions on page 67. *See* Paper 16, at 67.

Petitioner opposes the Motion. *See generally* Opp. Petitioner presents four main arguments. First, Petitioner argues that it is not enough to characterize the information as sales or marketing data; Patent Owner must explain why the information is sales or marketing data. *Id.* at 7–8. Second, Petitioner argues that some of the data appears to "to summarize *third parties'* activities in the relevant market, which implies the redacted information was derived from some source besides Stratus (at least in part)." *Id.* at 9. Third, some of the subject information is already public. *Id.* at 10. Fourth, some of the subject information is "self-serving opinions and characterizations by Mr. Jorgensen of the purportedly confidential information." *Id.* at 13.

Patent Owner replies to Petitioner's arguments, with Petitioner's main point being that the information indeed is sales and marketing data and/or Petitioner's confidential interpretation of said data, an argument we find persuasive. Paper 29 ("Reply"), at 1–5. In addition, Patent Owner proposes to remove *some* of the redactions. *Id.* at 5 (citing Ex. 2039). In that regard, Patent Owner states the following:

> In view of the foregoing, Stratus proposes to remove certain confidential redactions from the record by filing updated versions of the Jorgensen Declaration (Ex. 2015–16) and Response (Paper 15–16). Submitted herewith is Exhibit 2039, which identifies the redactions that Stratus proposes to remove in gold highlighting and those it proposes to maintain in violet highlighting.
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> The OUTSIDE COUNSEL ONLY designation is appropriate. The petitioner is an aggressive direct competitor. Moreover, Stratus has a reasonable fear that its confidential information may be leaked, as has already happened.

Id.

We make no determination as to the allegation of leaking, and we appreciate the narrowing of redactions. We are persuaded that the remaining subject information (in violet highlighting in Exhibit 2039) constitutes Patent Owner's sales and marketing data as well as its interpretation of said data, which Patent Owner persuasively asserts is confidential and eligible for sealing.

Accordingly, we grant Patent Owner's First Motion to Seal in part. Specifically, we grant the Motion as to the information contained in violet highlighting in Exhibit 2039, and we deny the Motion as to the information contained in gold highlighting in Exhibit 2039, which Patent Owner has agreed does not need redaction.

Accordingly, it is

ORDERED that the proposed Protective Order (Ex. 2017) is entered in all four proceedings;

FURTHER ORDERED that the following Motions to Seal are granted:

IPR2024-01209: Papers 32, 33, 45, and 59;

IPR2024-01210: Papers 34, 35, 47, and 60;

IPR2024-01211: Papers 34, 35, 47, and 60; and

IPR2024-01212: Papers 32, 33, 45, and 58; and

FURTHER ORDERED that the following Motions to Seal are granted in part as discussed above:

IPR2024-01209: Paper 18,

IPR2024-01210: Paper 18;

IPR2024-01209 (Patent 10,966,782)
IPR2024-01210 (Patent 10,736,688)
IPR2024-01211 (Patent 10,736,688)
IPR2024-01212 (Patent 10,925,664)

IPR2024-01211: Paper 18; and

IPR2024-01212: Paper 18.

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