UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVANOS MEDICAL, INC.,
Petitioner,

v.

STRATUS MEDICAL, LLC,
Patent Owner.

Case IPR2024-01211
Patent 10,736,688

PATENT OWNER'S THIRD MOTION TO SEAL

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I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Stratus respectfully submits this motion to seal. Stratus previously filed a protective order as Exhibit 2017, accompanied by a marked-up comparison of that document to the default protective order filed as Exhibit 2018.

II. DOCUMENTS TO BE SEALED AND INFORMATION TO BE PROTECTED

A. Surreply (Paper 42)

Stratus's surreply (Paper 42) includes confidential information on pages 25 and 27-29. Those pages have been marked "PROTECTIVE ORDER MATERIAL—OUTSIDE COUNSEL ONLY," pursuant to the protective order. The confidential information on those pages includes Stratus's internal revenue, marketing, and sales force data, as well as internal financial and business practice information for Avanos's COOLIEF* product that Avanos has identified as confidential business information ("CBI"). Paper 34 at 1-2. Stratus has redacted that confidential information from a public version of the surreply filed as Paper 43.

B. Exhibit 2040

Stratus's Exhibit 2040 is the transcript of the deposition of Dennis Johnson that was conducted on September 18, 2025. Confidential information appears at the following pages and lines of that transcript: 12:21, 22; 13:1, 2, 5-7, 12, 13; 14:18-

21; and 15:4, 7, 8. Those pages have been marked "PROTECTIVE ORDER MATERIAL—OUTSIDE COUNSEL ONLY," pursuant to the protective order. The confidential information on those pages includes the petitioner's CBI for its COOLIEF* product. Stratus has redacted that confidential information from a public version of Exhibit 2040 filed as Exhibit 2041.

C. Exhibit 2042

Stratus's Exhibit 2042 is the transcript of the deposition of Mark A. Konno that was conducted on September 19, 2025. Confidential information appears at the following pages and lines of that transcript: 32:19; 33:4, 8, 14, 17, 18, 22; 34:5; 35:13, 17, 20, 21; and 37:13-16. Those pages have been marked "PROTECTIVE ORDER MATERIAL—OUTSIDE COUNSEL ONLY," pursuant to the protective order. The confidential information on those pages includes Stratus's revenue data. That confidential information has been redacted from a public version of Ex. 2042 filed as Exhibit 2043.

III. GOOD CAUSE FOR SEALING THE IDENTIFIED DOCUMENTS

When enacting *inter partes* reviews, Congress directed the Office to "provid[e] for protective orders governing the exchange and submission of confidential information." 35 U.S.C. § 316(a)(7). Thus, "[t]he Board may, for good cause, issue an order to protect a party or person from disclosing confidential information . . ." 37 C.F.R. § 42.54(a). In *Argentum Pharmaceuticals LLC v. Alcon*

Research, Ltd., IPR2017-01053, Paper 27 (Jan. 19, 2018) (informative), the Board set forth the standard for sealing 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.

Id. at 3. While there is a presumption in favor of public disclosure, and the burden is on the movant to seal, application of the foregoing factors should be tempered by reasonableness, which is the touchstone of good cause. Overly harsh or stringent application of the "good cause" requirement would be contrary to Congress's intent that IPRs be "quick and cost effective alternatives to litigation." Consol. Office Trial Practice Guide at 56 (Nov. 2019) (citing legislative history). Extensive satellite litigation about good cause for sealing should be avoided, especially where a patent owner, subjected to an involuntary proceeding to defend its patent, must reasonably rely on confidential information. What constitutes good cause should take into consideration due process and the rights of parties under the Administrative Procedure Act.

As explained below, the *Argentum* factors support the requested sealing in this case.

A. Stratus's Revenue, Marketing, and Sales Force Data

1. Truly Confidential

Stratus's internal revenue, marketing, and sales force data are truly confidential. This is the type of information that is not typically publicly divulged. Furthermore, Stratus is a private company and, therefore, is not obligated to disclose its revenue breakdown and growth rate. After reasonably diligent inquiry, it is believed that this data has not been published or otherwise made public.

2. Concrete Harm from Public Disclosure

Public disclosure of Stratus's internal revenue, marketing, and sales force data would cause concrete harm to Stratus by giving the public detailed financial and business practice information that a competitor or others could use to gain an unfair advantage over Stratus.

3. Genuine Need to Rely

Stratus has a genuine need to rely on its internal revenue, marketing, and sales force data to support its showing of commercial success of the invention as an objective indicium of non-obviousness. *Crocs, Inc. v. Int'l Trade Comm'n*, 598 F.3d 1294, 1310 (Fed. Cir. 2010) (objective indicia "can be the most probative evidence of non-obviousness in the record, and enables the … court to avert the trap of

hindsight." (emphasis added) (citation omitted)); *Leo Pharm. Prods., Ltd. v. Rea*, 726 F.3d 1346, 1358 (Fed. Cir. 2013)) (noting that commercial success in relevant marketplace has been repeatedly recognized as highly relevant objective evidence of nonobviousness).

4. Balancing

Stratus's need for confidentiality outweighs the public's interest in having a fully open record. Stratus, as an involuntary participant in this case, should not be forced to reveal its sensitive and confidential financial and business practice information to fully defend its patents. Stratus's redactions are narrowly tailored to remove just its confidential information while revealing to the public as much as possible, striking an appropriate balance of the public's qualified interest in having an open record, on one hand, and Stratus's interest in maintaining it confidential business information.

B. Petitioner's COOLIEF* CBI

The petitioner initially presented its COOLIEF* CBI in its Reply (Paper 32) and its Declaration of Dennis Johnson in support thereof (Exhibit 1044). The petitioner accompanied those filings with a motion to seal (Paper 34) in which it requested that Avanos's COOLIEF* CBI be sealed. Stratus has not opposed that motion, the granting of which would require the same information to be sealed in

Stratus's surreply (Paper 42) and deposition transcript of Dennis Johnson (Exhibit 2040).

IV. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37 C.F.R. § 42.54 (A)

Counsel for Stratus and the petitioner have conferred in good faith. The petitioner indicated that it will not oppose the sealing of the information identified above, which has been redacted in the public versions of Stratus's surreply and deposition transcripts of Dennis Johnson and Mark Konno.

V. NON-CONFIDENTIAL VERSIONS OF CONFIDENTIAL DOCUMENTS

Stratus has provided a public, redacted version of each document subject to this motion to seal. The public version of Stratus's surreply is Paper 43, and the public versions of the deposition transcripts of Dennis Johnson and Mark Konno are Exhibit 2041 and Exhibit 2043, respectively. The redactions are not excessive and are reasonably tailored to protect the confidential information. Specifically, the redactions are limited to just a few words and numbers on a few pages.

VI. CONCLUSION

Stratus therefore respectfully requests that the Board grant this motion to seal.

Respectfully submitted,

Date: *2025 September 26*

By: */Kevin B. Laurence/*
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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2025, copies of the foregoing PATENT OWNER'S THIRD MOTION TO SEAL and all documents filed with it were served via electronic mail, as agreed to by counsel, upon the following counsel for the petitioner:

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