Filed: September 5, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVANOS MEDICAL, INC.,

Petitioner,

v.

STRATUS MEDICAL, LLC,

Patent Owner.

Case IPR2024-01212
Patent 10,952,664

PETITIONER'S MOTION TO SEAL REPLY INFORMATION

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I. INTRODUCTION

Pursuant to the parties' proposed Protective Order (Ex-2017) and 37 C.F.R. § 42.14, Petitioner Avanos Medical Inc. ("Avanos") submits this Motion to Seal ("Motion") concurrent with the filing of Petitioner's Reply to the Patent Owner's Response ("Reply"). There are four pending IPR proceedings between these parties, IPR2024-01209 through -01212 (the "IPRs"), and the identical exhibits are at issue in each one. Avanos submits an identical copy of this motion in each proceeding (other than case style and headers).

Avanos respectfully requests that certain designed confidential business information ("CBI") in the Reply and accompanying exhibits be sealed. As detailed further below, the documents and information that Avanos moves to seal include both: (1) Avanos's CBI; and (2) information that Patent Owner Stratus Medical, LLC has previously (through its May 23, 2025, Motion to Seal) or presently designated confidential.

II. BACKGROUND

On May 23, Stratus filed its Patent Owner Responses in each of the IPRs. Stratus argued that objective indicia of nonobviousness support the patentability of its claims, including alleged commercial success. Stratus submitted supporting declaration testimony from its Director of Marketing, Cody Jorgensen (Ex-2015) containing information that Stratus refers to (collectively) as "Sales and Market

Share Data." Stratus designated much of Mr. Jorgensen's testimony and corresponding discussion in the Patent Owner Responses as "PROTECTIVE ORDER MATERIAL—OUTSIDE COUNSEL ONLY" under the proposed Protective Order. Stratus filed motions to seal, which Avanos partially opposed. Those motions to seal remain pending.[1]

To rebut Stratus's allegations of commercial success, Avanos is filing additional exhibits/evidence, and making arguments discussing those exhibits in its Reply brief. One new exhibit contains Avanos financial information that Avanos designates as highly confidential—the declaration of Avanos's Associate Director of Marketing, Dennis Johnson (Ex-1044). Another new exhibit, the expert witness declaration of Mark Konno (Ex-1043), discusses information that Stratus filed with its Patent Owner Responses and designed as confidential at the time. Still two more new exhibits—the transcript of the cross-examination of Mr. Jorgensen and a document produced by Stratus containing its revenue and marketing expenditures (Ex-1047 and Ex-1060)—contain new testimony and financial that Stratus is

[1] Stratus's reply in support of its motions to seal filed a new confidential version of Jorgensen's testimony (Ex-2039) indicating portions Stratus agreed to withdraw the confidentiality designations. Stratus has not filed a revised public, redacted version of Jorgensen's testimony.

designating as highly confidential. The Petitioner's Reply briefs cite and discuss confidentially designated portions of all these exhibits.

This motion explains why good cause exists to seal the Johnson declaration (Ex-1044) and related portions of Petitioner's Reply briefs, as well requesting the Board provisionally seal the Konno declaration (Ex-1043) and its corresponding discussion in the Replies. on account of their references to information that Stratus designated as confidential when it filed its Patent Owner Responses.

The parties have agreed that Stratus will contemporaneously file its own, separate motion to seal Exhibits 1047 and 1060. Those documents (and corresponding discussion the Replies) comprise testimony of a Stratus employee-witness and a document produced by Stratus containing its financial information. So Stratus is in the best position to explain why it believes there is good cause to seal their designated portions. Petitioner Avanos does not intend to oppose sealing these two exhibits or the Replies' references to them.

Redacted, public versions of all documents are likewise filed contemporaneous to this motion and filing of the provisionally sealed exhibits. To aid identifying designated confidential information in Avanos's exhibits and Reply briefs, the designated information in the *confidential, outside counsel only* versions is highlighted with pink background over the text. In the public, redacted versions, the material does not appear.

III. LEGAL STANDARD

"There is a strong public policy for making all information filed in a quasijudicial administrative proceeding open to the public." *Garmin Int'l v. Cuozzo Speed Techs., LLC*, IPR2012–00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). The record for an inter partes review shall be made available to the public, except as otherwise ordered on a motion to seal. 35 U.S.C. § 326(a)(1); 37 C.F.R. § 42.14. The documents and information that are the subject of the motion to seal shall be treated as sealed until the motion is decided. *Id.*

In determining whether to grant a Motion to Seal, the Board must find "good cause" and "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." 37 C.F.R. § 42.54(a); Consolidated Trial Practice Guide (November 2019) at 19; *see also Argentum Pharms. LLC v. Alcon Res., Ltd.*, IPR2017-01053, Paper 27, 3-4 (PTAB Jan. 19, 2018) (Informative) (describing the "good cause" standard). As described in the Consolidated Trial Practice Guide, the Board identifies 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." The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes showing that the information is truly

confidential, and that such confidentiality outweighs the strong public interest in having an open record. *See Argentum*, Paper 27 at 3–4. A party moving to seal has the burden of 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 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. These factors support granting Avanos's motion to seal.

IV. GOOD CAUSE EXISTS TO SEAL

Avanos asks the Board to (a) seal Avanos's CBI and (b) maintain Stratus's alleged confidential information under seal (at least) until an order is entered on its motion(s) to seal.

A. Good cause exists to seal the Johnson declaration (Ex-1044) and corresponding sections of Petitioner's reply

Exhibit 1044 contains Avanos's confidential financial data—precise total net sales, in dollars and units, of its COOLIEF* product for 2023 and 2024—obtained from Avanos's financial systems, as well as information about how Avanos's financial systems record that information.

It easily satisfies the four *Argentum* factors. *First*, this sales data is "truly confidential." While Avanos discloses certain aggregated financial information publicly to the SEC and its investors, Avanos maintains strict confidentiality for

detailed, product-level information such as contained in Exhibit 1044. *Cf.* Ex-1047, 90:4-14 (Stratus's Jorgensen agreeing that other companies "don't share … exactly what they're selling and how much they're selling" and that Stratus doesn't disclose "how much it's selling, either"). Similarly, Avanos's internal business and financial records management processes are maintained in strict confidence.

Second, "concrete harm" to Avanos would result if the documents were accessible to Stratus or the public. Such financial and business information could be used to determine, for example, the pricing and market share of Avanos's products. Therefore the public disclosure or use (whether intentional or inadvertent) of Avanos's confidential information may provide Stratus (and others) with insight into Avanos's technology, pricing, market share, and business strategies. This could enable Stratus to interfere with Avanos's commercialization of its COOLIEF products or to develop competing products to erode COOLIEF's market share.

More specifically, the Avanos sales information is designated as "OUTSIDE COUNSEL ONLY" protective order material to prevent Stratus, as a party to this proceeding, from accessing it. Stratus's Marketing Director Mr. Jorgenson offered testimony about Stratus sales and revenue information and (purported) market share data, which Stratus likewise designated under the more restrictive tier of the Protective Order. Mr. Jorgensen's cross-examination testimony showed that Stratus

seeks out, values, and would attempt to use the kind of confidential Avanos's financial information contained in Ex-1060 to Stratus's benefit. *E.g.*, Ex-2015, ¶16-27; Ex-1047, 76:3-77:1 (testifying he obtained information about the salesforces of competitors from "third-party sources"), 88:4-90:14 (testifying he tries to "get the data as close as possible" given the sources he has available, but he does not "have access to the accounting for each [competitor] company"). Thus, Stratus Employees like Mr. Jorgensen should not have access to Avanos's confidential "Outside Counsel Only" information under the Protective Order. To prevent such disclosure and the resultant harm to commercial interests, the CBI that Avanos seeks to redact here is precisely the type of information to be protected pursuant to 37 CFR § 42.54(a).

Third, Avanos has a "genuine need" to rely on the documents. Stratus asserts (relying on the confidentially designated testimony of Mr. Jorgensen, that commercial success of its Nimbus products are objective evidence of nonobviousness of the challenged claims. Avanos's own sales data provide strong evidence rebutting the testimony of Mr. Jorgensen and arguments by Stratus. Avanos therefore has a genuine need to submit this information. Avanos should not be required to sacrifice its CBI to provide the board with a full evidentiary record here.

Fourth, the prejudicial effect that disclosure would have on Avanos far outweighs the public's interest in accessing this information. Avanos does not seek to seal all information related to Avanos' commercial success. Instead, Avanos has filed redacted versions of both the reply brief and the Johnson Declaration that redact specific numbers and accounting information, while preserving the arguments related to commercial success that are at issue in this matter. Accordingly, sealing the CBI in the Johnson declaration and corresponding information discussed in the Reply does not impact the ability of the public to understand the record in these IPRs.

In sum, Avanos asks the board to narrowly seal specific, non-public financial information to protect Avanos' commercial interests. Avanos respectfully requests that the Board grant this motion and enter an order sealing the redacted portions of the Johnson Declaration and the redacted portions of each Reply using the CBI from the Johnson Declaration.

B. Good cause exists to seal the new exhibits and the redacted portions of Petitioner's Replies relying on Stratus' alleged CBI

To respond to Stratus's "commercial success" evidence and arguments, Avanos necessarily discusses and quotes from Stratus's designed confidential information that Stratus filed with its Patent Owner Response (e.g., Ex-2015). Stratus moved to seal that information, but the Board has not yet addressed that motion. Documents and information that are the subject of motion to seal shall "be

treated as sealed pending the outcome of the ruling on the motion." 35 U.S.C. § 316(a)(1) (emphasis added); 37 C.F.R. § 42.14. Stratus has also made new designations of highly confidential information in Exhibit 1043, the Jorgensen cross-examination transcript, and Exhibit 1060, the financial data produced by Stratus.

Avanos has therefore marked as PROTECIVE ORDER MATERIAL – OUTSIDE COUNSEL ONLY the corresponding portions of its new Exhibit 1047 (expert declaration of Mark Konno) and the Reply briefs that reference Stratus's designated CBI (including Exhibits 1047 and 1060). Good cause exists to provisionally seal them. Each document contains information that Stratus previously designated "Outside Counsel Only" protective order material and has moved to seal.

As noted, Stratus is filing its own motion to seal Exhibits 1047 and 1060.

V. CONCLUSION

The Board should grant this Motion to maintain Avanos's CBI under seal and maintain Stratus's allegedly confidential information under seal pending a ruling on Stratus's motions to seal.

Respectfully submitted,

/Christopher B. Kelly/

Christopher B. Kelly (Reg. No. 62,573)
Lead Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and agreement of the parties, I certify that on September 5, 2025, a copy of this Motion to Seal was served on counsel for the Patent Owner by email to:

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