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 10,925,664

PATENT OWNER'S 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. A protective order was previously filed as Exhibit 2017 along with a marked-up comparison with the default protective order as Exhibit 2018.

II. DOCUMENTS TO BE SEALED AND INFORMATION TO BE PROTECTED

A. The Petitioner's Exhibit 1047

The petitioner's Exhibit 1047 is the transcript of the deposition of Cody Jorgensen, the Director of Marketing for Stratus, that was conducted on August 26, 2025. Confidential information appears at the following pages and lines of this deposition transcript: 37:5; 39:7-9, 11; 40:4, 5, 9-11; 42:22; 43:2, 7, 14, 16; 75:12, 13; 77:7; 81:12, 15, 16; 82:4, 9; 84:5; 86:2; 91:1, 4, 8, 11, 14, 15; 95:13, 17, 21; 96:3, 4; and 97:4, 10. This confidential information has been redacted from a further version of the transcript of the deposition of Cody Jorgensen, which the petitioner has publicly filed as its Exhibit 1048.

The passages identified in the previous paragraph contain information that has been marked "PROTECTIVE ORDER MATERIAL—OUTSIDE COUNSEL ONLY" pursuant to the protective order. The confidential information in those passages is Stratus's pricing and sales data for its products, comparisons of Stratus's sales data to that of other companies, and Stratus's internal data regarding its sales

force ("*Pricing, Sales, and Comparison Data*"). This *Pricing, Sales, and Comparison Data* was revealed during the deposition of Mr. Jorgensen due to Stratus's reliance on certain sales and market share information as evidence of commercial success as an objective indicium of non-obviousness.

B. The Petitioner's Exhibit 1060

The Petitioner's Exhibit 1060 is a document that Stratus voluntarily provided to Avanos in response to RFP Nos. 1, 2, and 4 of the petitioner's requests for production that were served on Stratus on June 17, 2025 (Exhibit 1036). Stratus's confidential information is present in the second row of each of the three tables of this document. This confidential information has been redacted from a further version of this document, which the petitioner has publicly filed as its Exhibit 1061.

The passages identified in the previous paragraph contain information that has been marked "PROTECTIVE ORDER MATERIAL—OUTSIDE COUNSEL ONLY" pursuant to the protective order. The confidential information in those passages is Stratus's revenue and marketing data for 2020-2024 ("*Revenue and Marketing Data*").

C. Paper 30

Paper 30 is the petitioner's reply, which reproduces and discusses the *Pricing, Sales, and Comparison Data* on pages 26-29, and reproduces and discusses the

Revenue and Marketing Data on page 26. This confidential information has been redacted from a further version of the petitioner's reply, which the petitioner has publicly filed as Paper 31.

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 confirm that the *Sales and Market Share Data* should indeed be sealed in this case.

A. Truly Confidential

The *Pricing, Sales, and Comparison Data* and the *Revenue and Marketing Data* are truly confidential. Stratus is a private company and, therefore, is not obligated to disclose either the specific *Pricing, Sales, and Comparison Data* in Exhibit 1047 and Paper 30 or the specific *Revenue and Marketing Data* in Exhibit 1060 and Paper 30. Stratus wishes to keep this data confidential. After reasonably diligent inquiry, it is believed that this data has not been published or otherwise made public.

B. Concrete Harm From Public Disclosure

Public disclosure of the *Pricing, Sales, and Comparison Data* and the *Revenue and Marketing Data* would cause concrete harm to Stratus by giving the public detailed pricing, financial, and competitive data that a competitor or others could use to gain an unfair advantage over Stratus.

C. Genuine Need to Rely

Stratus has a genuine need to rely on the *Pricing, Sales, and Comparison Data* and the *Revenue and Marketing Data* to establish commercial success of the invention as an objective indicia 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).

D. 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 internal business 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.

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 petitioner's Exhibit 1048, Exhibit 1061, and the public version of the petitioner's reply (Paper 31), and takes no position on whether the Board should grant the present motion.

V. NON-CONFIDENTIAL VERSIONS OF CONFIDENTIAL DOCUMENTS

As previously noted, Avanos has provided a public, redacted version of Exhibit 1047 as Exhibit 1048 and has provided a public, redacted version of Exhibit 1060 as Exhibit 1061. Avanos has also provided a public, redacted version of Paper 30 as Paper 31. The redactions are not excessive and are reasonably tailored to protect the confidential information. Specifically, the redactions are limited to just the *Pricing, Sales, and Comparison Data* and the *Revenue and Marketing Data* and nothing else in those documents.

VI. CONCLUSION

Stratus therefore respectfully requests that the Board grant this motion to seal, and enter the protective order.

Respectfully submitted,

Date: *2025 September 8*

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2025, copies of the foregoing PATENT OWNER'S 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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