UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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KUBOTA NORTH AMERICA CORPORATION,
Petitioner

v.

VERMEER MANUFACTURING COMPANY,

Patent Owner.

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IPR2025-00169
U.S. Patent No. 9,321,386

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PETITIONER'S MOTION TO SEAL

I. Introduction

Petitioner requests that Exhibit 1063, as it includes reproduction of material from Exhibit 2027, which was previously filed by the Patent Owner under seal, be sealed under 37 C.F.R. §42.54. Good cause exists to seal this document because it includes sensitive, non-public information.

Petitioner previously conferred with counsel for Patent Owner regarding the entering of the Default Protective Order filed by the Patent Owner with Exhibit 2027.

II. Governing Rules and PTAB Guidance; Relief Requested

While under 35 U.S.C. § 316(a)(1), papers filed in an *inter partes* review are generally open and available for access by the public, a party may file a concurrent Motion to Seal to protect public disclosure of certain confidential information, which has the effect of sealing the information at issue pending resolution of the motion. In determining whether to grant a Motion to Seal, the Board must find "good cause," 37 C.F.R. § 42.54(a), 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." Consolidated Trial Practice Guide ("TPG") at 19 (Nov. 2019). 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." *Id*.

Based on the procedure set forth in the TPG, Petitioner seeks to prevent the disclosure of sensitive information that is reproduced in Exhibit 1063 for purposes of discussion at the oral hearing of the above-named proceeding. Namely this exhibit includes reproduction of portions of Exhibit 2027, which was itself marked as "PROTECTIVE ORDER MATERIAL" and "Confidential Attorneys Eyes Only Information" and filed under seal. The Petitioner's confidential business information of Exhibit 2027 was produced as part of a voluntary discovery agreement between the parties in which the Patent Owner agreed to keep the underlining documents confidential. Slide 49 of Petitioner's Demonstratives (EX1063) contains a portion f confidential information obtained directly from Exhibits 2027. Petitioner requests Exhibit 1063 be filed under seal; a redacted version Exhibit 1064 is also filed and publicly available.

III. <u>Good Cause Exists for Sealing Certain Confidential Information.</u>

In deciding whether to seal documents, the Board must find "good cause," and must "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." *Garmin v. Cuozzo*, IPR2012-00001 (PTAB Apr. 5, 2013) (Paper 36). Good cause for sealing material is established by demonstrating that the following considerations favor sealing the material: whether (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. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative), at 4; *see also Corning Optical Communications RF, LLC, v. PPC Broadband, Inc.*, IPR2014-00440 (PTAB Apr. 14, 2015) (Paper 47), at 3.

A. <u>Exhibit 1063</u>

Exhibit 1063 contains information that Petitioner produced as part of an additional discovery request form Patent Owner, which is confidential business information and which was marked as "CONFIDENTIAL ATTORNEYS' EYES ONLY" and under the Protective Order. This confidential business information was produced as part of a voluntary discovery agreement between the parties. *See* Paper 24, Patent Owner's Unopposed Motion to Seal addressing Exhibit 2027. The *Argentum* factors favor sealing Exhibit 1063. Addressing the *Argentum* factors in turn:

First, the information Petitioner seeks to seal is truly confidential as it is related to confidential research, development, and commercial information. Specifically, the information is the result of multiple Kubota customer surveys, and

is highly strategic for Petitioner (Kubota). The Trial Practice Guide provides that "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." 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, those 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." *Id*. (citing 37 C.F.R. § 42.54).).[1] Exhibit 1063 includes materials reproduced from Exhibit 2027, which was filed under Protective Order and is marked "Attorney Eyes Only."

The evaluation techniques and results described in Exhibit 2027, and reproduced in Exhibit 1063, are confidential to, and trade secrets of, Petitioner. *See* Paper 24, Exhibit 2038 (protective order), Exhibit 2027. This material is the product of highly confidential business practices and includes confidential and sensitive information regarding technology evaluation and relating to Petitioner's practices

[1] Each page of Patent Owner's Exhibit 2027, of which a portion is included in Exhibit 1063, includes the footer provided noting the confidentiality requirement from the litigation in which the material was first produced by Kubota to Vermeer, as well as the confidentially requirement provided in this proceeding.

for dealing with entities that it seeks to develop business relationships. Petitioner guards information about its business dealings closely to protect its confidential information as well as that of third parties. Petitioner has not made, and does not intend to make, this information publicly available. This type of information lies at the heart of what the Federal Rule of Civil Procedure 26(c)(1)(G) and the PTAB's guidance are designed to protect. Customer survey methodologies and results represent significant investments of time and resources, and the insights derived from such research directly informs strategic decision-making. In particular it is confidential dealer survey information that reveals proprietary market intelligence. Further, internal analysis identifying customer purchasing behavior constitutes core competitive intelligence that the company guards.

Second, Petitioner would suffer concrete harms from the public disclosure of the confidential information sought to be sealed. Because the confidential information details Petitioner's proprietary and closely guarded business dealings and evaluation techniques, public access to this information could give Petitioner's competitors and would-be rivals unfair competitive advantages, including Patent Owner itself. Public disclosure of this information would effectively provide competitors with information as to Petitioner's market evaluation and strategy—intelligence that would otherwise require substantial independent investment to

develop. Importantly here, the Patent Owner Vermeer is a direct competitor of Petitioner Kubota. (The material is currently limited for attorneys eyes only.)

Third, the Patent Owner has relied upon this information in support of secondary considerations in arguing patentability of its claims, which the Petitioner intends to discuss and rebut in the oral hearing. The Board's determination of whether Petitioner has shown a reasonable likelihood of prevailing on unpatentability of the challenged claims by a preponderance of the evidence should be unaffected by the sealing of this confidential information. This is because Patent Owner alleges this confidential information goes to the non-obviousness of placing a vertical lift on compact utility loader, which is clearly shown in the prior art. Lacking a nexus, the Board need not rely on the confidential information in its decision. Further, demonstratives such as Exhibit 1063 are not evidence and will not be relied upon in the decision on patentability of the claims. Nonetheless, the Board has also relied, as necessary, on confidential information in a Final Written Decision while maintaining that confidential information under seal. *See, e.g.*, *Petrol. Geo-Services Inc. v. WesternGeco LLC*, IPR2014-01477, Paper 71, 62-68.

Fourth, on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record. However, that interest should yield where, as here, disclosure provides minimal benefit to the public's understanding of

the proceedings and would cause concrete competitive harm to Petitioner if not maintained confidential. Petitioner respectfully submits that the "strong public interest" in having an open record should not outweigh a party's expectation that confidential information, here constrained to one page, should be maintained as confidential.

IV. Conclusion

For the above reasons, Petitioner requests that the Board seal and protect the Parties' confidential information in Exhibit 1063.

Respectfully submitted,

Date: March 16, 2026

/ David M. O'Dell /
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CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e), service was made on Patent Owner as detailed below.

Date of service March 16, 2026

Manner of service Electronic Mail: rbrophy@atllp.com
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Documents served ***PETITIONER'S MOTION TO SEAL***

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