

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PACIFICORP,
Petitioner,

v.

BIRCHTECH CORP.,
Patent Owner.

IPR2025-00424
Patent 10,589,225 B2

Before KRISTINA M. KALAN, ZHENYU YANG, and DAVID COTTA,
Administrative Patent Judges.

KALAN, *Administrative Patent Judge.*

ORDER
Granting Patent Owner's Motions to Seal
Granting Petitioner's Motion to Seal
Granting Joint Motion to Seal
37 C.F.R. § 42.54

I. INTRODUCTION

On July 15, 2025, Patent Owner filed a Motion to Seal the Patent Owner's Preliminary Response (Paper 17) and Exhibits 2011, 2017, and 2037–42. Paper 15, 2–3.

On August 5, 2025, Patent Owner filed a Motion to Seal the Patent Owner's Authorized Sur-Reply to Petitioner's Reply to Patent Owner's Preliminary Response (Paper 21). Paper 20.

On January 20, 2026, Patent Owner filed a Motion to Seal the Patent Owner's Response (Paper 49) and Exhibits 2050–2053 and 2056. Paper 48.

On March 16, 2026, Patent Owner filed a Motion to Seal the Patent Owner's Supplemental Response and Exhibits 2059–2062. Paper 64.¹

On March 30, 2026, Petitioner filed a Motion to Seal the Petitioner's Supplemental Reply to Patent Owner's Supplemental Response and Exhibits 1151 and 1153–1159. Paper 67.

On May 28, 2026, the parties filed a Joint Motion to Seal portions of the Second Institution Decision (Paper 69). Paper 71.

II. ANALYSIS

A party may move to seal confidential information including, *inter alia*, sensitive commercial information. *See* 37 C.F.R. § 42.54. It is the movant's burden to show good cause for sealing such information, and we balance the party's asserted need for confidentiality with the strong public interest in open proceedings. *See Argentum Pharms. LLC v. Alcon Research*,

¹ Also on March 16, 2026, Patent Owner filed Paper 62 with the document title "Patent Owner's Motion to Seal." Paper 62, however, is not a motion to seal but appears to be an identical copy of Patent Owner's Supplemental Response (Paper 63).

Ltd., IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative). When assessing whether the standard has been met, we may consider whether the information at issue is truly confidential, whether harm would result upon public disclosure, and whether the interest in maintaining confidentiality as to the information outweighs the strong public interest in an open record. *Id.* at 3–4.

The Board may, for good cause, issue a protective order “to protect a party or person from disclosing confidential information.” 37 C.F.R. § 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. Patent Trial and Appeal Board Consolidated Trial Practice Guide 19–20, 107 (Nov. 2019) (“Trial Practice Guide”).² The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a Default Protective Order. *See* Trial Practice Guide 19–20, 107–22. The parties agree to be bound by the Board’s Default Protective Order and request entry of the same. *See* Paper 15, 1. We grant the parties’ request and enter the Default Protective Order (Trial Practice Guide 117–22).

A. Exhibits 2011 and 2037–2042

Patent Owner argues that good cause exists to seal Exhibit 2011 because it contains information that was designated confidential by the Delaware district court in *Midwest Energy Emissions Corp., et al. v. Arthur J. Gallagher & Co., et al.*, C.A. 1:19-cv-01334 (D. Del.). Paper 15, 1–2. Patent Owner argues that good cause exists to seal Exhibits 2037–2042 because they “are certain Petitioners’ agreements with refined coal suppliers,

² Available at <http://www.uspto.gov/TrialPracticeGuideConsolidated>.

which were produced by Petitioners to Patent Owner and designated by Petitioners as ‘Restricted – Attorneys’ Eyes Only.’” Paper 15, 2–3. Patent Owner indicates that Petitioners “do not oppose sealing” Exhibits 2011 and 2037–2042. *Id.* at 2–3.

We note that Patent Owner has filed two copies of each of Exhibits 2011 and 2037–2042 in this case in the USPTO’s electronic filing system: (1) a confidential, unredacted version filed on July 15, 2025 with Availability set to “Parties and Board;” and (2) a public, redacted version filed on November 13, 2025 with Availability set to “Public.”

We understand Patent Owner’s Motion to request that we seal the confidential, non-public versions of Exhibits 2011 and 2037–2042 filed on July 15, 2025, and we grant Patent Owner’s Motion to that extent.

We have reviewed Exhibits 2011 and 2037–2042. The redactions to the public versions of Exhibits 2011 and 2037–2042 appear to be minimal and we are persuaded that Patent Owner appropriately has limited the redactions in the public versions to portions that reflect the asserted confidential information.

B. Exhibit 2017

Patent Owner argues that good cause exists to seal Exhibit 2017 because it “contains details regarding confidential processes maintained by a third party—the Energy & Environmental Research Center (‘EERC’).” Paper 15, 2. Patent Owner also states:

Petitioners provided the following position statement with respect to this document: “Petitioners have not seen Patent Owner’s arguments as to why the underlying documents should be sealed, but do not oppose sealing provided Patent Owner demonstrates satisfaction of the factors in *Argentum Pharms.*

LLC v. Alcon Research, Ltd., IPR2017-01053, Paper 27 (Jan. 19, 2018).”

We note that Patent Owner has filed two copies of Exhibit 2017 in this case in the USPTO’s electronic filing system: (1) a confidential, unredacted version filed on July 15, 2025 with Availability set to “Parties and Board;” and (2) a public, redacted version filed on November 13, 2025 with Availability set to “Public.”

We understand Patent Owner’s Motion to request that we seal the confidential, non-public version of Exhibit 2017 filed on July 15, 2025, and we grant Patent Owner’s Motion to that extent.

We have reviewed Exhibit 2017, which is a declaration of Thomas Erickson, Director of the State Energy Research Center and Intellectual Property (IP) and Technology Commercialization at the Energy & Environmental Research Center (EERC). The redacted version of Ex. 2017 contains only the first two pages of the declaration. The remainder of the declaration consists of extensive logbook entries that contain detailed process information, which we are persuaded is sensitive commercial information.

C. Patent Owner’s Preliminary Response (Paper 17)

Patent Owner argues that good cause exists to seal Patent Owner’s Preliminary Response because it “includes quotations or references to the above-noted exhibits [2011, 2017, and 2037–42] that may be deemed confidential for the same reasons explained above.” Paper 15, 2. Patent Owner states that Petitioners “do not oppose sealing this document.” *Id.* at 3.

We note that Patent Owner has filed two copies of Patent Owner’s Preliminary Response in this case in the USPTO’s electronic filing system:

(1) Paper 17, a confidential, unredacted version filed on July 15, 2025 with Availability set to “Parties and Board;” and (2) Paper 39, a public, redacted version filed on November 13, 2025 with Availability set to “Public.”

We understand Patent Owner’s Motion to request that we seal Paper 17, the unredacted, non-public version of Patent Owner’s Preliminary Response. We grant Patent Owner’s Motion to seal Paper 17, filed on July 15, 2025. We have reviewed the redactions to the public version of Patent Owner’s Preliminary Response (Paper 39), and we are persuaded that Patent Owner appropriately limited the redactions in the public version to portions that reflect the asserted confidential information.

D. Patent Owner’s Authorized Sur-Reply to Petitioner’s Reply to Patent Owner’s Preliminary Response (Paper 21)

Patent Owner argues that good cause exists to seal Patent Owner’s Authorized Sur-Reply to Petitioner’s Reply to Patent Owner’s Preliminary Response (Paper 21) because it “contains quotations from and/or references to Exhibits 2037–42” which “are certain Petitioners’ agreements with refined coal suppliers.” Paper 20, 1–2. Patent Owner states that Petitioners “do not oppose sealing this document.” *Id.* at 3.

We note that Patent Owner has filed two copies of Patent Owner’s Authorized Sur-Reply to Petitioner’s Reply to Patent Owner’s Preliminary Response in this case in the USPTO’s electronic filing system: (1) Paper 21, a confidential, unredacted version filed on August 5, 2025 with Availability set to “Parties and Board;” and (2) Paper 40, a public, redacted version filed on November 13, 2025 with Availability set to “Public.”

We understand Patent Owner’s Motion to request that we seal Paper 21, the unredacted, non-public version of Patent Owner’s Preliminary

Response. We grant Patent Owner's Motion to seal Paper 21, filed on August 5, 2025. We have reviewed the redactions to the public version of Patent Owner's Preliminary Response (Paper 40), and we are persuaded that Patent Owner appropriately limited the redactions in the public version to portions that reflect the asserted confidential information.

E. Exhibits 2050–2053 and 2056

Patent Owner argues that good cause exists to seal Exhibits 2050–2053 because they contain information that was designated confidential by the Iowa district court in *In re: Midwest Energy Emissions Corp. Pat. Litig.*, No. 4:24-md-03132-SHL-WPK (S.D. Iowa). Paper 48, 1–3. Patent Owner indicates that “Exhibits 2050 and 2051 are Petitioner PacifiCorp’s First and Second Amended Answer, Affirmative Defenses, and Counterclaims in Response to Plaintiff’s First Amended Complaint for Patent Infringement.” *Id.* at 1. Patent Owner indicates that “Exhibit 2052 is the License Agreement Between Brandon Shores LLC, Talen Generation LLC, Talen Montana, LLC, and H.A. Wagner LLC, and Midwest Energy Emissions Corp. and MES Inc., dated Jan. 15, 2021” and “Exhibit 2053 is the Settlement and License Agreement Between Midwest Energy Emissions Corp. and MES Inc., and Chem-Mod LLC, Arthur J. Gallagher & Co., AJG Coal, LLC, DTE Energy Co., and DTE Energy Resources, LLC, dated December 28, 2023.” *Id.* at 2. Exhibit 2056 is an unredacted copy of Patent Owner’s Response in IPR2025-00425. Patent Owner argues that good cause exists to seal Exhibit 2056 because it “includes quotations or references to the above exhibits [2050–2053] that may be deemed confidential for the same reasons explained above, or to other exhibits in this proceeding that have been filed

under seal.” *Id.* at 3. Patent Owner indicates that Petitioners “do not oppose sealing” 2050–2053 and 2056. *Id.*

We have reviewed Exhibits 2050–2053 and 2056 and we are persuaded that they contain sensitive business information. We grant Patent Owner’s request to seal Exhibits 2050–2053 and 2056.

F. Patent Owner’s Response (Paper 49)

Patent Owner argues that good cause exists to seal Patent Owner’s Response (Paper 49) because it “includes quotations or references to the above exhibits [2050–2053 and 2056] that may be deemed confidential for the same reasons explained above, or to other exhibits in this proceeding that have been filed under seal. Paper 48, 3.

We have reviewed Paper 49 and are persuaded that it contains quotations having to do with sensitive business information. We grant Patent Owner’s Motion to Seal as to Paper 49.

G. Exhibits 2059–2062

Patent Owner argues that good cause exists to seal Exhibits 2059, 2061, and 2062 because “Exhibits 2059, 2061, and 2062 are the deposition transcripts of Jennifer McIvor, David Cabello, and Brad Richards and designated as Confidential and/or Protective Order Material.” Paper 64, 1. Patent Owner argues that good cause exists to seal Exhibit 2060 because “Exhibit 2060 is the Ownership and Operation Agreement of Colstrip Units #3 & #4, dated May 6, 1981, which is a confidential document produced by Petitioners, designated as ‘Restricted—Attorneys’ Eyes Only.’” *Id.* at 2. Patent Owner states that “Petitioners do not oppose this Motion.” *Id.*

We have reviewed Exhibits 2059–2062 and we are persuaded that they contain sensitive business information. We grant Patent Owner’s request to seal Exhibits 2059–2062.

H. Patent Owner’s Supplemental Response (Paper 63)

Patent Owner argues that good cause exists to seal Patent Owner’s Supplemental Response (Paper 63) because it “contains quotations or references to the above exhibits that may be deemed confidential for the same reasons explained above, or to other exhibits in this proceeding that have been filed under seal.” Paper 64, 2. Patent Owner states that “Petitioners do not oppose this Motion.” *Id.*

We have reviewed Paper 63 and are persuaded that it contains quotations having to do with sensitive business information. We grant Patent Owner’s Motion to Seal as to Paper 63. We note that Patent Owner filed Paper 62 with the document name of “Patent Owner’s Motion to Seal.” Paper 62, however, is not a motion to seal but appears to be an identical copy of Patent Owner’s Supplemental Response (Paper 63). No motion to seal Paper 62 has been filed in this proceeding; however, because the duplicate filing appears to be a ministerial error, and because Paper 62 appears to be identical to Paper 63, we treat it the same as Paper 63.

I. Exhibits 1151 and 1153–1159 and Petitioner’s Supplemental Reply to Patent Owner’s Supplemental Response (Paper 66)

Petitioner argues that good cause exists to seal Exhibit 1151 because it “is the Deposition Transcript of Jim Trettel, March 6, 2026” and “[d]uring Mr. Trettel’s deposition, counsel for Patent Owner designated the transcript confidential under the IPR protective order” because “[t]he deposition of Mr. Trettel discussed confidential agreements, including with Talen (EX2052),

Chem-Mod (EX2053), and others.” Paper 67, 1–2. Petitioner argues that good cause exists to seal Exhibit 1153 because it “is a letter from PacifiCorp’s outside counsel to ME2C’s counsel, dated September 30, 2024, that relates to terms of the Talen Agreement (EX2052).” *Id.* at 2. Petitioner argues that good cause exists to seal Exhibit 1154 because it “is a response letter from ME2C’s counsel to PacifiCorp’s counsel, dated October 14, 2024, and discussing the terms of the Talen Agreement.” *Id.* Petitioner argues that good cause exists to seal Exhibit 1155 because it “is an email between counsel for ME2C and counsel for MidAmerican, dated April 2, 2025, and discussing terms of the Chem-Mod Agreement (EX2053).” *Id.* Petitioner argues that good cause exists to seal Exhibit 1156 because it “is PacifiCorp’s Motion for Judgment on the Pleadings from *In re: Midwest Energy Emissions Corp. Patent Litig.*, No. 4:24-MD-03132-SHL-WPK, ECF 190 (S.D. Iowa September 10, 2025)” and “was filed under seal in Iowa, as it discusses terms of the Talen Agreement.” *Id.* Petitioner argues that good cause exists to seal Exhibit 1157 because it “is MidAmerican Energy Company’s Amended Answer from *In re: Midwest Energy Emissions Corp. Patent Litig.*, No. 4:24-MD-03132-SHL-WPK, ECF 84 (S.D. Iowa March 21, 2025)” and “was filed under seal in Iowa.” *Id.* at 3. Petitioner argues that good cause exists to seal Exhibit 1158 because it “is Wisconsin Power and Light Company’s Amended Answer from *In re: Midwest Energy Emissions Corp. Patent Litig.*, No. 4:24-MD-03132 SHL-WPK, ECF 85 (S.D. Iowa March 21, 2025)” and “was filed under seal in Iowa.” *Id.* Petitioner argues that good cause exists to seal Exhibit 1158 because it “is Wisconsin Power and Light Company’s Amended Answer from *In re: Midwest Energy Emissions Corp. Patent Litig.*, No. 4:24-MD-

03132 SHL-WPK, ECF 85 (S.D. Iowa March 21, 2025)” and “was filed under seal in Iowa.” *Id.* Petitioner argues that good cause exists to seal Exhibit 1159 because it “is MidAmerican’s Motion for Partial Judgment on the Pleadings *In re: Midwest Energy Emissions Corp. Patent Litig.*, No. 4:24-MD-03132-SHL WPK, ECF 195 (S.D. Iowa Sept. 11, 2025)” and “was filed under seal in Iowa.” *Id.* Petitioner indicates that Patent Owner “does not oppose sealing these documents.” *Id.* at 4. Petitioner also moves to seal its Supplemental Reply to Patent Owner’s Supplemental Response (Paper 66), which cites to Exhibits 1151 and 1153–1159. *Id.* at 1.

We have reviewed Exhibits 1151 and 1153–1159 and Petitioner’s Supplemental Reply to Patent Owner’s Supplemental Response and we are persuaded that they contain sensitive business information. We grant Petitioner’s request to seal Exhibits 1151 and 1153–1159 and Petitioner’s Supplemental Reply to Patent Owner’s Supplemental Response.

J. Second Institution Decision (Paper 69)

The Joint Motion (Paper 71) indicates that “[t]he parties are concurrently filing a redacted version of the Institution Decision, but request that Paper 69 be maintained under seal in accordance with the Default Protective Order.” Paper 71, 2.

The parties argue that good cause exists to seal the Second Institution Decision (Paper 69) because it “quotes Exhibit 2060, an Ownership and Operating Agreement between PacifiCorp and other entities,” “quotes from various agreements between ChemMod and former Petitioners” and “identifies information contained in a confidential settlement agreement between Chem-Mod and Patent Owner.” *Id.* at 2–3.

Paper 69 is the Board’s second decision on institution of May 26, 2026 and its Availability is set to “Parties and Board.” Paper 72 is titled “Joint Redactions to Institution Decision (Paper 69)” and is a public, redacted version filed on May 28, 2026 with Availability set to “Public.”

We have reviewed the redactions to the public version of seal the Second Institution Decision (Paper 72), and we are persuaded that the parties have appropriately limited the redactions in the public version to portions that reflect the asserted confidential information. We grant the parties’ Joint Motion to Seal Paper 69, filed on May 26, 2026.

III. CONCLUSION

We remind the parties that confidential information that is subject to a protective order ordinarily becomes public forty-five (45) days after final judgment in a trial. *See* Trial Practice Guide 21–22. There is an expectation that information will be made public when the existence of the information is identified in a final written decision following a trial. *See id.* After final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public in accordance with 37 C.F.R. § 42.56.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Default Protective Order is entered in this proceeding;

FURTHER ORDERED that Patent Owner’s Motion to Seal (Paper 15) is granted;

FURTHER ORDERED that the confidential version of Exhibits 2011 and 2037–2042 filed on July 15, 2025 shall remain sealed and designated as “Board and Parties Only” until further notice;

FURTHER ORDERED that the confidential version of Patent Owner’s Preliminary Response (Paper 17), filed on July 15, 2025 shall remain sealed and designated as “Board and Parties Only” until further notice;

FURTHER ORDERED that Patent Owner’s Motion to Seal (Paper 20) is granted;

FURTHER ORDERED that the confidential version of Patent Owner’s Authorized Sur-Reply to Petitioner’s Reply to Patent Owner’s Preliminary Response (Paper 21), filed on August 5, 2025 shall remain sealed and designated as “Board and Parties Only” until further notice;

FURTHER ORDERED that Patent Owner’s Motion to Seal (Paper 48) is granted as to Exhibits 2050–2053 and 2056 and Paper 49;

FURTHER ORDERED that Exhibits 2050–2053 and 2056 and Paper 49 shall remain sealed and designated as “Board and Parties Only” until further notice;

FURTHER ORDERED that Patent Owner’s Motion to Seal (Paper 64) is granted as to Exhibits 2059–2062 and Papers 62 and 63;

FURTHER ORDERED that Exhibits 2059–2062 and Papers 62 and 63 shall remain sealed and designated as “Board and Parties Only” until further notice;

FURTHER ORDERED that Petitioner’s Motion to Seal (Paper 67) is granted;

FURTHER ORDERED that Exhibits 1151 and 1153–1159 and Petitioner’s Supplemental Reply to Patent Owner’s Supplemental Response (Paper 66) shall remain sealed and designated as “Board and Parties Only” until further notice;

FURTHER ORDERED that the Joint Motion to Seal (Paper 71) is granted;

FURTHER ORDERED that the Second Institution Decision (Paper 69) shall remain sealed and designated as “Board and Parties Only” until further notice.

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