

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PACIFICORP,
Petitioner,

v.

BIRCHTECH CORP.,
Patent Owner.

IPR2025-00687
Patent 10,933,370 B2

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

KALAN, *Administrative Patent Judge.*

ORDER
Granting Patent Owner's 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 and 2017. Paper 16 ("Patent Owner's Motion" or "Mot."). Mot. 2–3.

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, 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.

A. Exhibit 2011

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.). Mot. 1–2. Patent Owner indicates that Petitioners "do not oppose sealing" Exhibit 2011. *Id.* at 2.

We note that Patent Owner has filed two copies of Exhibit 2011 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 2011 filed on July 15, 2025, and we grant Patent Owner’s Motion to that extent.

We have reviewed Exhibit 2011, which is an expert report of Dr. Stephen Niksa including opinions regarding the invalidity of various patents asserted in the Delaware district court. The redactions to the public version of Exhibit 2011 appear to be minimal, and we are persuaded that Patent Owner appropriately has limited the redactions in the public version 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’).” Mot.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

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 and 2017] that may be deemed confidential for the same reasons explained above." Mot. 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 38, 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 38), and we are persuaded that Patent Owner appropriately limited the redactions in the public version to portions that reflect the asserted confidential information.

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* Patent Trial and Appeal Board's Consolidated Trial Practice Guide¹ (84 Fed. Reg. 64,280 (Nov. 21, 2019)), 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 Patent Owner's Motion to Seal is granted;

FURTHER ORDERED that the confidential version of Exhibit 2011 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 Exhibit 2017 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

¹ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

IPR2025-00687
Patent 10,933,370 B2

remain sealed and designated as “Board and Parties Only” until further notice.

IPR2025-00687
Patent 10,933,370 B2

FOR PETITIONERS:

David Tobin
Brian Oaks
Syed Fareed
Christian Tatum
MCDERMOTT WILL & SCHULTE LLP
dtobin@mwe.com
boaks@mwe.com
sfareed@mwe.com
ctatum@mwe.com

Thomas M. Patton
R. Scott Johnson
FREDRIKSON & BYRON, P.A.
tpatton@fredlaw.com
rsjohnson@fredlaw.com

Michael Piery
Lauren Bolcar
QUARLES
michael.piery@quarles.com
lauren.bolcar@quarles.com

Michelle Kemp
PERKINS COIE
kemp-ptab@perkinscoie.com

FOR PATENT OWNER:

Hamad M. Hamad
Justin T. Nemunaitis
Richard Cochrane
CALDWELL, CASSADY & CURRY P.C.
hhamad@caldwellcc.com
jnemunaitis@caldwellcc.com
rcochrane@caldwellcc.com