

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PACIFICORP,
Petitioner,

v.

BIRCHTECH CORP.,
Patent Owner.

IPR2025-00717
Patent 10,926,218 B2

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

YANG, *Administrative Patent Judge*.

ORDER
Granting Patent Owner's Motion to Seal
37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

Patent Owner filed a Motion to Seal, seeking to seal Exhibits 2011 and 2017. Paper 15 (“Mot.”). Patent Owner represents that the parties “jointly request[] entry of the Board’s Default Protective Order.” *Id.* at 1. Petitioner did not file an opposition to the Motion.

For the reasons discussed below, we grant Patent Owner’s Motion to Seal and enter the Board’s Default Protective Order.

II. MOTION TO SEAL

The record of an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided.

35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. Only “confidential information” may be protected against public disclosure. 35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54. The Board observes a strong public policy in favor of making information filed in *inter partes* review proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes a sufficient 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 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.

Argentum, Paper 27 at 3–4.

Exhibit 2011 is the Opening Expert Report of Dr. Stephen Niksa filed in *Midwest Energy Emissions Corp., et al. v. Arthur J. Gallagher & Co., et al.*, 1:19-cv-01334 (D. Del.). Patent Owner argues that good cause exists to seal this exhibit because it was designated confidential in the district court. Mot. 1–2. Patent Owner represents that Petitioner does not oppose sealing Exhibit 2011. *Id.* at 2.

Exhibit 2017 is a Declaration of Thomas Erickson. Patent Owner argues that

Exhibit 2017 contains details regarding confidential processes maintained by a third party—the Energy & Environmental Research Center (“EERC”). In particular, the document contains information regarding the EERC’s use of and operating procedures for its Pilot Test Combustor, which it generally maintains as confidential to protect its research initiatives and the confidentiality of information from entities that work with the EERC.

Mot. 2.

According to Patent Owner, Petitioner stated that it “do[es] 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).” Mot. 2.

Upon review of Exhibits 2011 and 2017, we are persuaded that good cause exists to seal these exhibits because they contain confidential information, and public disclosure of that confidential information would likely result in a concrete harm.

III. ENTRY OF PROTECTIVE ORDER

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”).¹ 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.

Patent Owner states that the parties “have jointly requested entry of the Board’s Default Protective Order, and Patent Owner re-raises that request here.” Mot. 1. We note that the parties had not previously requested entry of the Default Protective Order in this proceeding. Nonetheless, we interpret Patent Owner’s statement as the parties’ joint request for entry of the Default Protective Order (Trial Practice Guide 117–22) and grant this request.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner’s Motion to Seal is granted; and

FURTHER ORDERED that the Default Protective Order is entered in this proceeding.

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

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