

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

FREIGHTCAR AMERICA, INC.,

Petitioner,

v.

NATIONAL STEEL CAR LIMITED,

Patent Owner

IPR2025-01047 (Patent 8,132,515)

**PATENT OWNER'S MOTION TO EXPUNGE CONFIDENTIAL
INFORMATION**

On behalf of National Steel Car Limited

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Pursuant to 37 C.F.R. § 42.56, Patent Owner, National Steel Car Limited (“NSC” or “Patent Owner”), hereby requests that certain confidential information in the record be expunged. Specifically, Patent Owner respectfully submits that: (i) Paper 8, Patent Owner’s Discretionary Denial Brief (Confidential Version); (ii) Paper 43, Patent Owner’s Response (Confidential Version); (iii) Exhibit 2027, Confidential Settlement Agreement between the Parties regarding a prior litigation; (iv) Exhibit 2028, Confidential Internal NSC Email; (v) Exhibit 2038, Confidential Internal NSC Memorandum; (vi) Exhibit 2039, Confidential Internal NSC Email; (vii) Exhibit 2040, Confidential Email between Canadian National and NSC; (viii) Exhibit 2041, Confidential Correspondence from NSC to Canadian National; (ix) Exhibit 2048, Confidential Internal NSC Memorandum; (x) Exhibit 2007, Petitioner’s Answer to NSC’s Second Amended Complaint in the case *National Steel Car Limited v. FreightCar America, Inc. et al.*, Civ. No. 24-594-JLH-CJB (D. Del.) (the “District Court Case”) (Confidential Version); and (xi) Exhibit 2033, Petitioner’s Answer to NSC’s Interrogatory No. 7 in the District Court Case (collectively, the “Confidential Documents”) should be expunged from the record as these pleadings and exhibits contain Patent Owner and Petitioner’s highly confidential business information.

This motion is being timely filed within 45 days from the Director Review Decision Reversing the Institution Decision. *See* Office Patent Trial Practice Guide

November 2019 (“Trial Practice Guide”). For the reasons set forth below, Patent Owner requests that the Confidential Documents be expunged. Petitioner’s counsel stated that they will not oppose this motion.

I. Applicable Legal Standards

37 C.F.R. § 42.56 provides that “[a]fter denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.” Likewise, the Trial Practice Guide states:

There is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial. A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.

Trial Practice Guide. A party seeking expungement from the record must show good cause by demonstrating “that any information sought to be expunged constitutes confidential information, and that Petitioner’s interest in expunging it outweighs the public’s interest in maintaining a complete and understandable history of this inter partes review.” *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 97 at 2 (P.T.A.B. Apr. 15, 2015).

II. Reasons for Relief Requested

A. Procedural Background

The Board granted Patent Owner’s Motion for Entry of a Protective Order. Paper 25 (Order granting Motion); Paper 9 (Motion); Paper 9 Appendix A (Protective Order). Two unopposed Motions to Seal have been filed in this proceeding (Paper 9 and Paper 42), collectively requesting that the Board maintain the Confidential Documents under seal. As indicated in the Motions to Seal, the Confidential Documents contain confidential, sensitive business information that has not been published or made public. *See* Paper 9 at 1, 3-4; Paper 42 at 3. The Confidential Documents contain, *inter alia*, Patent Owner and Petitioner’s highly confidential agreements, internal communications, business strategy, and Petitioner’s admissions related to the District Court litigation. *See id.*

The Board granted Patent Owner’s first Motion to Seal (Paper 9)¹, ordering that the Confidential Documents that were filed by the Patent Owner remain under seal with restricted, non-public access. Paper 25.

B. Good Cause Exists for Expunging the Confidential Documents

All of the Confidential Documents contain Patent Owner or Petitioner’s highly confidential business information, which Patent Owner and Petitioner guard to protect their own businesses. Specifically, the Confidential Documents contain

¹ The Board did not rule on Patent Owner’s second Motion to Seal (Paper 42) prior to the Director’s Review Decision Reversing Institution Decision (Paper 49).

highly confidential and sensitive business information regarding business relationships, confidential agreements, business strategy, and communications with customers and could cause competitive business injury to Patent Owner and Petitioner if publicly disseminated. Paper 9 at 7-9. The Confidential Documents also contain highly confidential information regarding Patent Owner and Petitioner's internal business operations, business plans, business strategy, and other sensitive business information that is non-public and could cause competitive business injury to Patent Owner and Petitioner if publicly disseminated. *Id.* The Confidential Documents also include certain highly confidential agreements that could similarly cause competitive business injury to Patent Owner and Petitioner if publicly disseminated. *Id.* As discussed, public, redacted versions of certain of the Confidential Documents have been filed that redact only the confidential and sensitive portions.

As to the Patent Owner's Discretionary Denial Brief (Paper 8), Patent Owner's Response (Paper 43), and Petitioner's Answer to NSC's Second Amended Complaint in the District Court Case (Exhibit 2007), the redactions of confidential information are minimal and do not inhibit the public's ability to completely understand the file history of this proceeding. Thus, the redacted versions of Patent Owner's Discretionary Denial Brief (Paper 8), Patent Owner's Response (Paper 43), and Petitioner's Answer to NSC's Second Amended Complaint in the District Court

Case (Exhibit 2007) “strike an appropriate balance between the public policy for an open record and the legitimate need to protect confidential information from disclosure.” *Atlanta Gas Light*, Paper 97 at 4 (citing *RPX Corp. v. VirnetX Inc.*, IPR2014-00171, Paper 62 at 4–5) (P.T.A.B. Sept. 9, 2014)).

Further, the Confidential Documents sought to be expunged address only real-party-in-interest issues and do not bear on the patentability of any claim, the Institution Decision (Paper 27), or the Director’s Review Decision Reversing the Institution Decision (Paper 49). Accordingly, because of the lack of reliance by the Board or Director on the specific terms of the Confidential Documents, the record provides a “complete and understandable file history for public notices purposes,” so there is no public interest in now making the Confidential Documents publicly available. Consolidated Trial Practice Guide at 21-22; MPEP § 724.05 (Patent Office may expunge information that is not material to patentability). The public interest, therefore, is served in not now making the Confidential Documents publicly available.

Good cause, therefore, exists to expunge the Confidential Documents.

III. Conclusion

For all of the foregoing reasons, Patent Owner respectfully requests that the Board protect Patent Owner and Petitioner’s highly confidential business information and expunge the Confidential Documents pursuant to 37 C.F.R. § 42.56.

IV. Request for Conference Call with the Board

Should the Board not be inclined to grant this Motion to Expunge Confidential Information, Patent Owner hereby respectfully requests a conference call with the Board to discuss any concerns prior to the Board issuing a decision on the Motion.

Respectfully Submitted,

Date: June 25, 2026

/Kevin Adams/

Safet Metjahic (Reg. No. 58,677)
Robert D. Keeler (Reg. No. 70,546)
Kenneth Sheehan (Reg. No. 36,270)
Kevin Adams (Reg. No. 81,680)

*Attorneys for Patent Owner,
National Steel Car Limited*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **PATENT OWNER’S MOTION TO EXPUNGE CONFIDENTIAL INFORMATION** was served electronically in its entirety on the date noted below via electronic mail to the following attorneys of record:

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