

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOPSOE INC.,
Petitioner

v.

CASALE SA,
Patent Owner

Case IPR2025-01454
U.S. Patent No. 11,286,168

MOTION TO SEAL PURSUANT TO PROPOSED PROTECTIVE ORDER
PURSUANT TO 37 C.F.R. § 42.54

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner requests that the proposed Protective Order in Attachment A, which is modified from the Default Protective Order as shown in the markup attached as Attachment B, be entered and govern disclosure of the information below filed under seal. The changes to the Default Protective Order are to conform certain provisions to the protective order entered in the parallel district court action. Petitioner does not oppose entry of the proposed protective order in this proceeding.

I. DOCUMENTS TO BE SEALED

A. EX2016

For the reasons set forth below under Section II, there is good cause to request the sealing of this document pursuant to the attached Proposed Protective Order (Attachment A), which differs from the Default Protective Order only in the manner shown in the attached markup (Attachment B) comparing the Proposed Protective Order to the Default Protective Order.

Patent Owner seek to file EX2016 (Topsoe's Invalidity Contentions in *Topsoe Inc. v. Casale SA*, No. 3:24-cv-00033 (S.D. Tex.)) under seal because Petitioner has designated its contention claim charts as "Confidential – Attorneys' Eyes Only" in the parallel district court proceedings involving the '168 Patent, pursuant to the protective order entered in that case.

Patent Owner has conferred with Petitioner regarding the scope of redactions to EX2016 and the parties agreed to the redactions in EX2014 (redacted version of Topsoe’s Invalidity Contentions), which was filed publicly. The redactions are tailored to protect only the confidential information contained in the exhibit as designated by Petitioner in the parallel district court proceedings.

II. GOOD CAUSE FOR SEALING THE IDENTIFIED DOCUMENTS

When enacting *inter partes* reviews (“IPRs”), Congress directed the Board to “provid[e] for protective orders governing the exchange and submission of confidential information.” 35 U.S.C. § 316(a)(7). Thus, “[t]he Board may, for good cause, issue an order to protect a party or person from disclosing confidential information . . .” 37 C.F.R. § 42.54(a). In *Argentum Pharm. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018), the Board set forth the standard for sealing confidential information:

[A] movant to seal must demonstrate adequately 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.

Id. at 3 (“the *Argentum* Factors”).

The *Argentum* factors support granting this Motion to Seal for the reasons below.

Factor (1): In the parallel district court proceeding, Petitioner has designated its invalidity contentions charts and documents that it states correspond to ammonia plants as “Confidential – Attorneys’ Eyes Only” pursuant to the protective order entered in the district court. Petitioner thus states that the documents contain proprietary, confidential information related to the ammonia plants.¹

Factor (2): Petitioner has served its invalidity contentions charts, and produced documents cited therein, to Patent Owner under the terms of the district court protective order which limits the disclosure of such information.

Factor (3): Patent Owner has a need to reference Petitioner’s invalidity contentions charts in Patent Owner’s authorized Motion to Vacate and Terminate Proceedings, as contemplated by the Board’s Order authorizing the same. *See* Paper 38.

Factor (4): As discussed above, Patent Owner will reference these AEO-designated charts in its Motion to Vacate and Terminate Proceedings. The parties have agreed to redactions to EX2016 and the redacted version of EX2016 has been publicly filed as EX2014. The redactions were made aiming to disclose to the public

¹ Patent Owner reserves the right to dispute the confidentiality designation of the invalidity contentions claim charts and the documents cited therein in the parallel district court proceeding.

as much as possible without violating the protective order in the parallel district court proceeding. The Board should thus find that the present motion strikes an appropriate balance of the parties' interest in confidentiality and the public's interest in the full record.

III. CONCLUSION

Patent Owner respectfully requests that the Board enter the attached protective order (Attachment A) and grant this Motion to Seal.

Dated: June 1, 2026

/Case Collard/

Case Collard (Reg. No. 72,901)
Dorsey & Whitney LLP
1400 Wewatta Street, Suite 400
Denver, Colorado 80202-5549
Tel: 303-629-3400
Fax: 303-629-3450

Payton George (*pro hac vice*)
Dorsey & Whitney LLP
1401 New York Ave. NW, Suite 900
Washington, D.C. 20005
Tel: 202-442-3509
Fax: 202-442-3199

Erin Kolter (*pro hac vice*)
Dorsey & Whitney LLP
701 Fifth Avenue, Suite 6100
Seattle, WA 98104
Tel: 206-903-8800
Fax: 206-903-8820

Attorneys for Patent Owner, Casale SA

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOPSOE INC.,
Petitioner

v.

CASALE SA,
Patent Owner

Case IPR2025-01454
U.S. Patent No. 11,286,168

PROPOSED PROTECTIVE ORDER

Protective Order

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL – CONFIDENTIAL,” or if applicable, “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Party Representatives. Outside counsel of record for a party in the proceeding.

(B) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

(C) In-house counsel. In-house counsel of a party.

(D) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to

sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

(E) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. For confidential information designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” access to, and disclosure of, such information shall be limited to individuals listed in paragraphs 2(A-B) and (D-E).

4. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient

uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) Documents and Information Filed With the Board.

(i) A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) Documents and Information Exchanged Among the Parties. Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL – CONFIDENTIAL,” or, if applicable, “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and shall be produced in a manner that maintains its confidentiality.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

(k) Standard Acknowledgement of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

Standard Acknowledgment for Access to Protective Order Material

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

[Signature]

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOPSOE INC.,
Petitioner

v.

CASALE SA,
Patent Owner

Case IPR2025-01454
U.S. Patent No. 11,286,168

~~DEFAULT~~PROPOSED PROTECTIVE ORDER

~~Default~~ Protective Order

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL, – CONFIDENTIAL,” or if applicable, “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.””

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

~~(A) Parties.~~ ~~Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.~~

~~(AB)~~ Party Representatives. ~~Representatives Outside counsel~~ of record for a party in the proceeding.

~~(BC)~~ Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

~~(CD)~~ In-house counsel. In-house counsel of a party.

~~(DE)~~ Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are

reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

(~~EF~~) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. For confidential information designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” access to, and disclosure of, such information shall be limited to individuals listed in paragraphs 2(A-B) and (D-E).

~~3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in (d)(2)(A) – (E), shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person and after signing the Acknowledgment. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.~~

4. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) Documents and Information Filed With the Board.

(i) A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential

description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) Documents and Information Exchanged Among the Parties. Documents (including deposition transcripts) and other information designated as

confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL – CONFIDENTIAL,” or, if applicable, “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and shall be produced in a manner that maintains its confidentiality.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

(k) Standard Acknowledgement of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

Standard Acknowledgment for Access to Protective Order Material

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

[Signature]

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), the undersigned certifies that on June 1, 2026, a complete and entire copy of this Motion to Seal and Attachments A and B was served on the Petitioner via electronic mail at the following addresses:

Jeffrey A. Andrews: jandrews@yettercoleman.com

Christopher R. Johnson: cjohnson@yettercoleman.com

Jeffrey J. Phillips: jphillips@spencerfane.com

/Case Collard/

Case Collard

Reg. No. 72,901

Dorsey & Whitney LLP

1400 Wewatta Street, Suite 400

Denver, Colorado 80202-5549

Tel: 303-629-3400

Fax: 303-629-3450