UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SKECHERS U.S.A., INC.,
Petitioner,

v.

FAST IP, LLC,
Patent Owner.

U.S. Patent No. 12,458,101

MOTION TO SEAL, REQUEST FOR IN CAMERA REVIEW, AND FOR ENTRY OF MODIFIED PROTECTIVE ORDER REGARDING PETITIONER'S SEARCH DISCLOSURE STATEMENT

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Petitioner Skechers U.S.A., Inc. ("Petitioner") respectfully submits this Motion to seal its Search Disclosure Statement ("SDD"), request *in camera* review of its SDD, and seek entry of a proposed Modified Protective Order.[1]

I. Relief Requested

Pursuant to Director Squires' November 17, 2025 Memorandum, *Voluntary Search Disclosure Declarations as a Favorable Factor in Institution Decisions* ("Director's Memorandum"), and under 37 C.F.R. §§ 42.14 and 42.54, Petitioner hereby respectfully (1) moves to seal Petitioner's Search Disclosure Declaration ("SDD"), filed concurrently herewith as Exhibit 1019 ("EX1019"); (2) requests *in camera* review thereof; and (3) moves for entry of its proposed modified version of the Board's Default Protective Order ("Modified Protective Order"). A clean version of the Modified Protective Order is included as Attachment A, and a redline version showing changes to the Board's Default Protective Order is included as Attachment B. In accordance with the modifications thereof, the SDD is designated as "PROTECTIVE ORDER MATERIAL – FILING PARTY AND BOARD ONLY," and has been filed under "Filing Party and Board" in accordance with the confidentiality procedures outlined in the Director's Memorandum.

[1] Director Squires' November 17, 2025 Memorandum expressly authorizes Petitioner to file this Motion.

II. Good Cause Exists For Sealing Petitioner's SDD, Conducting *In Camera* Review, and Entering The Modified Protective Order

The *Office Patent Trial Practice Guide* ("PTAB Practice Guide") provides that "the rules aim to strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." 77 FED. REG. 48756, 48760 (Aug. 14, 2012). Further, those rules "identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information." *Id.* (citing 37 C.F.R. § 42.54). Thus, the Board may, for good cause, issue an order to protect a party or person from disclosing confidential information, including, but not limited to, "[s]pecifying terms, including time and place, for the disclosure or discovery." 37 C.F.R. § 42.54(a).

In accordance with the Director's Memorandum, the SDD details "the databases and repositories in which the asserted prior art was located; the general search approach, search terms, filters, queries, or classification pathways employed; other analytics or publicly accessible resources consulted; the amount of time spent on the search; and the amount of time spent reviewing search results." Director's Memorandum at 1. In other words, Petitioner's SDD describes search strategies, search terms, filters, queries, classification pathways, time spent, and/or the like of its attorneys and/or associated agents, all of which constitute

protected work-product, the disclosure of which would act to "disrupt the orderly development and presentation of [Petitioner's] case" before the Board. *United States v. Nobles*, 422 U.S. 225, 238-39 (1975); *see also id.* ("At its core, the work product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case."); *id.* ("It is … necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself."). Inasmuch as the Petition does not rely on the SDD, which is being submitted in accordance with the procedure outlined in the Director's Memorandum solely to aid in the Director's exercise of his discretion over the institution process, there is no need for Patent Owner to have access to the SDD in connection with this *inter partes* review, nor any prejudice if the SDD is reviewed *in camera* with Filing Party and Board access only. Petitioner further notes that the Director's Memorandum states that if the SDD is "filed as confidential, the SDD will not be publicly disclosed except as required by law." Director's Memorandum at 2.

Accordingly, Petitioner submits that good cause exists to grant its Motion to seal, conduct *in camera* review of its SDD, and enter its Modified Protective Order.

III. The Modified Protective Order

Pursuant to 37 C.F.R. § 42.54, Petitioner requests that the Modified Protective Order attached below as Attachment A be entered. The Modified Protective Order designates the SDD as "PROTECTIVE ORDER MATERIAL – FILING PARTY AND BOARD ONLY" and, in accordance with the Director's Memorandum, states that "the Office may use the information in the SDD for internal training, improving examination processes, and analytics." These modifications effect the necessary and appropriate confidentiality status of the SDD and explicitly acknowledge the Office's ability to utilize the SDD for the purposes enumerated in the Director's Memorandum.

Petitioner reserves the right to seek appropriate further modifications to the Modified Protective Order in the future to the extent necessary.

IV. Conclusion

For the reasons set forth above, Petitioner respectfully requests that the Board (1) grant Petitioner's Motion to Seal; (2) provide for *in camera* review of Petitioner's SDD; and (3) enter the Modified Protective Order included as Attachment A.

Dated: August 6, 2026

Respectfully submitted,

/s/ Samuel K. Lu
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Attorney for Petitioner,
Skechers U.S.A., Inc.

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MODIFIED PROTECTIVE ORDER

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MODIFIED 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" Or "PROTECTIVE ORDER MATERIAL – FILING PARTY & BOARD ONLY."

2. Access to confidential information that is designated "PROTECTIVE ORDER MATERIAL" 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.

(B) Party Representatives. Representatives of record for a party in the proceeding.

(C) 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.

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

(E) 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.

(F) 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. Access to confidential information that is designated "PROTECTIVE ORDER MATERIAL – FILING PARTY & BOARD ONLY" is limited to :

(A) The Filing Party: The Party filing the confidential information with the designation "PROTECTIVE ORDER MATERIAL – FILING PARTY & BOARD ONLY."

(B) 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.

(i) To the extent that the confidential information designated "PROTECTIVE ORDER MATERIAL – FILING PARTY & BOARD ONLY" is a Search Disclosure Declaration (SDD) as outlined in Director John A. Squires's November 17, 2025 Memorandum on Voluntary Search Disclosure Declarations as

a Favorable Factor in Institution Decisions, the Office may also use the information in an SDD for internal training, improving examination processes, and analytics.

4. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in Section (2)(A)–(E), shall be extended access to confidential information designated "PROTECTIVE ORDER MATERIAL" 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.

5. 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.

6. 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 confidential as "PROTECTIVE ORDER MATERIAL" that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as "PROTECTIVE ORDER MATERIAL" and shall be produced in a manner that maintains its confidentiality.

(C) Documents and Information Exchanged Between a Filing Party and Board Only. Documents and other information designated confidential as "PROTECTIVE ORDER MATERIAL – FILING PARTY & BOARD ONLY" in proceedings before the Board shall be clearly marked as such and shall be produced in a manner that maintains their confidentiality.

7. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information designated as "PROTECTIVE ORDER MATERIAL" must return, or certify the destruction of, all copies of the confidential information to the producing party.

8. Standard Acknowledgement of Protective Order. The following form may be used to acknowledge a protective order and gain access to information designated "PROTECTIVE ORDER MATERIAL" covered by the protective order:

[CAPTION]

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]

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MODIFIED PROTECTIVE ORDER [REDLINE]

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[Signature]