

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYNGENTA CROP PROTECTION AG,
Petitioner,

v.

UPL LTD,
Patent Owner.

PGR2023-00017
U.S. Patent No. 11,445,727

**PETITIONER'S MOTION FOR ENTRY OF
STIPULATED MODIFIED PROTECTIVE ORDER**

Petitioner, Syngenta Crop Protection AG, moves for entry of a stipulated modified Protective Order in PGR2023-00017. The Patent Owner does not oppose this motion for entry of a stipulated modified Protective Order in PGR2023-00017.

Petitioner and Patent Owner discussed modifications to the Default Protective Order and reached an agreement. The proposed modifications include an additional category of confidential information labeled as “Protective Order Material-Attorney Eyes Only.”

The agreed modifications are shown in a redline version of the Board’s Default Protective Order and Acknowledgement form, which is attached to this motion as Exhibit 1. In addition, a clean version of the stipulated modified proposed Protective Order is attached hereto as Exhibit 2.

Accordingly, entry of the attached modified protective order is respectfully requested.

Date: October 12, 2023

Respectfully submitted,

/Daniel Bucca/

Toni-Junell Herbert

Registration No. 34,348

David Klecyngier

Registration No. 72,632

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Registration No. 42,368

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Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on October 12, 2023, a copy of the foregoing PETITIONER’S MOTION FOR ENTRY OF STIPULATED MODIFIED PROTECTIVE ORDER was provided via email to the following:

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/Monica Cantu/
Monica Cantu

Exhibit 1

UNITED STATES PATENT AND TRADEMARK OFFICE

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SYNGENTA CROP PROTECTION
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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.”

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.

(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. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in 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. The Parties also have the right to further designate confidential information or portions of confidential information as “PROTECTIVE ORDER

MATERIAL - ATTORNEY'S EYES ONLY.” The “PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY” designation shall be limited to such documents, materials, testimony, or information that the designating party believes, in good faith, constitutes or contains trade secrets or other non-public, highly sensitive confidential research, development, technical, business, and/or financial information that has not become public, the disclosure of which is likely to cause harm to the competitive position of the producing party.

5. Access to confidential information marked “PROTECTIVE ORDER MATERIAL – ATTORNEY’S EYES ONLY” is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Outside Counsel. (i) outside counsel who appear on the pleadings as counsel for a Party, and (ii) partners, associates, employees, and staff of such counsel to whom it is reasonably necessary to disclose the information for this proceeding, including supporting personnel employed by the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks, commercial copy vendors, and shorthand reporters, or (iii) independent attorneys contracted to assist outside counsel in connection with this 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) The Office. Employees and representatives of the 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.

(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.

6. Persons receiving confidential information and/or confidential information marked “PROTECTIVE ORDER MATERIAL – ATTORNEY’S EYES ONLY” 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.

57. Persons receiving confidential information and/or confidential information marked “PROTECTIVE ORDER MATERIAL – ATTORNEY’S EYES ONLY” 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” and shall be produced in a manner that maintains its confidentiality.

68. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information and/or confidential information marked “PROTECTIVE ORDER MATERIAL – ATTORNEY’S EYES ONLY” must return, or certify the destruction of, all copies of the confidential information to the producing party, other than copies of documents filed with the Board, which may be maintained for archival purposes.

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Patent Owner.

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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 and/or confidential information marked “PROTECTIVE ORDER MATERIAL – ATTORNEY’S EYES ONLY” 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.

Name:

Date

Exhibit 2

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Name:

Date