

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYNGENTA CROP PROTECTION AG,
Petitioner,

v.

UPL LTD.,
Patent Owner.,

Case PGR2023-00017
Patent No. 11,445,727

PATENT OWNER'S MOTION TO SEAL

I. Introduction

Patent Owner UPL Ltd. requests that the confidential versions of Patent Owner's Response and Exhibit 2020 be sealed under 37 C.F.R. § 42.54. Good cause to seal these documents exist because public versions of Patent Owner's Response and Exhibit 2020 have also been filed, and the redacted information is based on Petitioner's Exhibits 1031-1033 that Petitioner has filed under seal and identified as its confidential and sensitive business information that is not publicly available. Counsel for Petitioner has also previously filed a motion for entry of a modified protective order to cover this information. Paper 20.

II. Governing Rules and PTAB Guidance

Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public, but a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion.

Similarly, 37 C.F.R. § 42.14 provides:

The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7) (“The Director shall prescribe regulations -- . . . providing for protective orders governing the exchange and submission of confidential information”). In that regard, the *Office Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012) provides:

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.

* * *

Confidential Information: The 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. § 42.54.

III. Identification of Confidential Information

The confidential information consists of what Petitioner has identified as its sensitive business information that is not publicly available. This information is contained in the following documents:

- Patent Owner’s Response in pages 2, 71-80, and 87;
- Exhibit 2020 in pages 87, 91-92, 94-101, 104-106, and 118-212.

IV. Good Cause Exists for Sealing the Confidential Information

The Board's 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. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). Here, the information that Patent Owner seeks to seal is information pertaining to what Petitioner has identified as confidential and sensitive business information that is not publicly available.

Patent Owner seeks to seal the portions of Patent Owner's Response (pages 2, 71-80, 87) and Exhibit 2020 (pages 87, 91-92, 94-101, 104-106, and 118-212), which cite, reproduce, or substantially describe what Petitioner has identified as its confidential information. This information includes what Petitioner has identified as confidential technical information about testing conducted by Petitioner. Patent Owner seeks to seal only the portions of Patent Owner's Response and Exhibit 2020 that include this confidential information.

III. CERTIFICATION OF NON-PUBLICATION

The undersigned counsel certifies the information sought to be sealed by this Motion to Seal has not, to their knowledge, been published or otherwise made public.

IV. CONCLUSION

For the reasons set forth above, Patent Owner respectfully requests the Board grant this Motion to Seal.

Respectfully submitted,

Dated: November 9, 2023

/Mark J. Feldstein/
Mark J. Feldstein, Reg. No. 46,693
Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.

Lead Counsel for Patent Owner
UPL Ltd.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Patent Owner's Motion to Seal** was served electronically via email on November 9, 2023, in its entirety on the following:

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Petitioner has consented to electronic service.

Dated: November 9, 2023

/William Esper/
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