

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INARI AGRICULTURE, INC.,
Petitioner,

v.

CORTEVA AGRISCIENCE LLC,
Patent Owner.

PGR2023-00022
Patent 11,371,055 B2

Before MICHAEL J. FITZPATRICK, ZHENYU YANG, and
DEVON ZASTROW NEWMAN, *Administrative Patent Judges*.

NEWMAN, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Unopposed Motion to Seal and
Entering Agreed-Upon Protective Order
37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

Patent Owner filed an Unopposed Motion to Seal and Enter Agreed-To Protective Order (Paper 18, “Motion to Seal”), in which Patent Owner moves to seal Exhibits 2084–2095. The Motion to Seal includes a “proposed agreed-upon Protective Order” (Paper 18, 1; *see id.* App. A, “Protective Order”) that adopts the Board’s default protective order, except for “one modification to Section 2(D) to clarify the number of in-house counsel who may access confidential information” (*id.* at 1 (citing Patent Trial and Appeal Board Consolidated Trial Practice Guide 117–122 (Nov. 2019) (“Trial Practice Guide”)¹)). Patent Owner represents that Petitioner agrees to the proposed Protective Order and does not oppose the Motion to Seal. Paper 18, 1.

For the reasons discussed below, we *grant* Patent Owner’s Motion to Seal and *enter* Patent Owner’s Protective Order.

II. MOTION TO SEAL

The record of a post-grant review shall be made available to the public, except as otherwise ordered, and any documents filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 326(a)(1); 37 C.F.R. § 42.14. Only “confidential information” may be protected against public disclosure. 35 U.S.C. § 326(a)(7); 37 C.F.R. § 42.54. The Board observes a strong public policy in favor of making information filed in its proceedings open to the public. *See Argentum*

¹ Available at <http://www.uspto.gov/TrialPracticeGuideConsolidated>.

Pharms. LLC v. Alcon Research, Ltd., IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c).

Patent Owner explains that Exhibits 2084–2095 contain confidential information that “pertains to proprietary protein research information that is not publicly available.” Paper 18, 4; *see also id.* at 5–6. Further, Patent Owner asserts that disclosure of such information “would create a competitive disadvantage for Patent Owner and provide competitors with knowledge of Patent Owner’s proprietary protein research.” *Id.* at 5. Moreover, Patent Owner asserts that Exhibits 2084–2095 “are entirely confidential, and redaction would not be practical.” *Id.*

Upon review of Exhibits 2084–2095, we are persuaded that good cause exists to seal these documents in their entirety because, on balance, the facts weigh in favor of Patent Owner’s interest in maintaining confidentiality.

III. MODIFIED PROTECTIVE ORDER

The Board may, for good cause, issue a protective order “to protect a party or person from disclosing confidential information.” 37 C.F.R. § 42.54(a). A protective order is not entered by default but must be proposed by one or more parties and must be approved and entered by the Board. Trial Practice Guide 19–20, 107. The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a Default Protective Order. *See id.* at 19–20, 107–122. The parties may propose

modifications to the Default Protective Order and the Board will generally accept such proposed changes if they are consistent with the integrity and efficient administration of the proceedings. *Id.* at 115.

Patent Owner proposes a modified version of the Default Protective Order that includes “minor modifications,” as shown in a redline copy of the Default Protective Order included with the Motion to Seal. Paper 18, 6; *id.* at App. B. The redline copy shows that Patent Owner proposes to limit the in-house counsel who may access confidential information to “[u]p to three attorneys who are employees of Corteva or Inari who have executed the ‘Acknowledgment and Agreement to Be Bound.’” *Id.* at App. B, § 2(D). Patent Owner represents that Petitioner does not oppose the Protective Order, including this modification of the Default Protective Order. *Id.* at 6.

After reviewing the proposed modification to the Default Protective Order, we determine that the changes are consistent with the integrity and efficient administration of the proceedings. Accordingly, we enter the agreed-upon Protective Order.

IV. ORDER

Accordingly, it is

ORDERED that Patent Owner’s Motion to Seal is *granted* with respect to Exhibits 2084–2095; and

FURTHER ORDERED that the Protective Order (Paper 18, App. A) is *entered*.

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