

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
U.S. Patent No. 11,371,055

PATENT OWNER'S FIFTH UNOPPOSED MOTION TO SEAL

I. Introduction

Pursuant to the Board's August 7, 2024 email providing the Oral Argument Transcript for review for Confidential Information and the Board's further guidance in its August 21, 2024 email, Patent Owner Corteva Agriscience LLC requests that the unredacted version of the Oral Argument Transcript and the proposed redacted version of the Oral Argument Transcript (Exhibit 2100) be sealed under 37 C.F.R. § 42.54 for confidentiality. Good cause to seal these documents exists because (i) if the Board grants this motion, a public, redacted version of the Oral Argument Transcript will be made of record, and (ii) the four proposed redactions to the Oral Argument Transcript are limited and discuss only confidential information from the previously sealed versions of Petitioner's Reply, the Reply Declaration of Dr. Silverstone, Patent Owner's Sur-Reply, and Exhibit 2089. *See* Paper 27; Paper 35; Exhibit 2089. Specifically, the proposed redactions contain confidential information which reflects Patent Owner's proprietary protein research, including identification of individual amino acid substitutions in Exhibit 2089, which are not publicly available.

The Board previously entered the parties' agreed-upon Protective Order and granted Patent Owner's motion to seal Exhibit 2089 in its entirety. The Board also previously granted Patent Owner's third motion to seal the portions of Patent Owner's Sur-Reply and Dr. Silverstone's Second Deposition Transcript (Ex. 2098)

that discussed, quoted, and/or referred to the confidential information in the sealed Exhibit 2089. Here, the same reasons support granting Patent Owner's fifth motion to seal the unredacted version of the Oral Argument Transcript and Exhibit 2100. *See* Paper 39; Paper 18; Paper 29; Paper 22. As instructed by the Board, Patent Owner has conferred with Petitioner, who takes no position on these proposed redactions.

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 shall be 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 Patent Owner’s proprietary protein research information that is not publicly available, including individual amino acid substitutions. This information is contained in the following documents:

- Oral Argument Transcript at pages 10, 11, and 45.

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) (“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.”). Here, the confidential information that Patent Owner seeks to seal pertains to proprietary protein research information that is not publicly available.

The Board has found good cause to seal proprietary scientific research information under similar circumstances and should find the same here. For example, in *Bayer CropScience LP v. Corteva Agriscience LLC*, the Board found good cause to grant a motion to seal documents regarding “proprietary protein research and analysis.” IPR2023-01036, Paper 15 at 3-6 (PTAB January 8, 2024); *see also* IPR2023-01037, Paper 16 at 3-6 (PTAB January 8, 2024); IPR2023-01038, Paper 16 at 3-6 (PTAB January 8, 2024). Similarly, in *Illumina, Inc. v. Cornell Research Foundation, Inc.*, the Board found good cause to grant a patent owner’s motion to seal a document containing non-public research data. IPR2016-00549, Paper 20 at 4-6 (PTAB May 26, 2017); *see also* IPR2016-00553, Paper 21 at 4-6 (PTAB May 26, 2017); IPR2016-00557, Paper 52 at 4-6 (PTAB May 26, 2017); IPR2016-00559, Paper 21 at 4-6 (PTAB May 26, 2017). The Board also found good cause to seal portions of a declaration and the Patent Owner’s Response that cited such non-public data. IPR2016-00549, Paper 20 at 4-6 (PTAB May 26, 2017). In *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, the Board similarly found

good cause to grant a patent owner's motion to seal copies of documents that contained "proprietary technical and product development information," as well as declarations and papers discussing that confidential information. IPR2013-00517, Paper 83 at 4-5 (PTAB Jan. 29, 2015).

Here, the confidential information quoted, discussed, and/or referred to in the unredacted Oral Argument Transcript and Exhibit 2100 is information from the already-sealed Exhibit 2089, which is confidential information reflecting Patent Owner's non-public protein research. Indeed, the confidential information identifies specific amino acid residue substitutions within variant proteins. Given the confidential nature of these substitutions, Patent Owner requests limited redactions to the portions of the Oral Argument Transcript that specifically disclose those changes. Patent Owner has maintained Exhibit 2089 and the information it contains regarding amino acid substitutions as confidential and proprietary. If such non-public research data is made public, it would create a competitive disadvantage for Patent Owner by publicly identifying the site and nature of specific amino acid substitutions in its protein variants.

Accordingly, there is good cause to grant this fifth motion to seal.

V. Proposed Protective Order

On February 5, 2024, the Board entered the parties' agreed-upon Protective Order that was attached as Appendix A to the first unopposed Motion to Seal

(Paper 18). *See* Paper 22. This previously entered Protective Order will also govern the treatment of the unredacted version and the proposed redacted version of the Oral Argument Transcript (Ex. 2100) and the confidential information therein.

VI. Conclusion

For the reasons set forth above, Patent Owner respectfully requests that the Board grant this fifth unopposed motion to seal.

Respectfully submitted,

Dated: August 22, 2024

/Pier D. DeRoo/

Pier D. DeRoo

Reg. No. 69,340

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Patent Owner's Fifth Unopposed Motion to Seal** was served electronically via email on August 22, 2024, in its entirety on the following:

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Petitioner has consented to electronic service by email.

Dated: August 22, 2024

/Mark A. Rosenberger/
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