

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COLLEGE PRODUCTS, INC.,

Petitioner,

v.

INTIRION CORPORATION,

Patent Owner.

Case No. PGR2024-00004

Patent No. 11,674,746

**PATENT OWNER'S UNOPPOSED MOTION TO FILE UNDER SEAL
PURSUANT TO 37 C.F.R. §§ 42.14 AND 42.54**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner (“Intirion”) respectfully submits this Patent Owner’s Unopposed Motion to File Under Seal, requesting that the following documents remain under seal: Patent Owner’s Response, Exhibits 2001, 2004, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2021, 2022, 2023, 2024, 2025, 2026, 2028, 2029, 2030, 2031, 2035, 2036. These documents are being filed concurrently with this motion.

Patent Owner has conferred with the Petitioner (“CP”), and the Petitioner does not oppose this motion to seal.

I. GOOD CAUSE

For good cause, the Board may “issue an order to protect a party or person from disclosing confidential information.” 37 C.F.R. § 42.54. 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.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

Attached as **Exhibit A** is a proposed protective order that the parties have jointly agreed should govern the submission documents disclosing confidential information.

Each of the categories of documents listed below meet this standard of “confidential information” in 37 C.F.R. § 42.54 and for the reasons identified in the

parties' proposed protective order. Thus, good cause exists to have these documents to remain under seal.

A. Patent Owner's Response

Patent Owner has filed under seal its Response. The Response contains significant amounts of confidential research, development, and/or commercial information that should remain under seal.

This information fits squarely within the kinds of information that the Trial Practice guide considers to be "confidential information," such as "confidential research, development, or commercial information." 77 Fed. Reg. 48756, 48760.

There is good cause for keeping the confidential information contained in Patent Owner's Response under seal. Publicly revealing business development information, Patent Owner's revenue numbers, and communications related to Petitioner's product development could put Patent Owner and Petitioner at a competitive disadvantage in the marketplace. Additionally, Petitioner does not oppose this information remaining under seal.

B. Documents Designated as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" in the District Court Litigation.

Patent Owner has filed under seal documents containing confidential information that were previously produced in the concurrent district court proceeding, *Intirion Corporation v. College Products, Inc.*, 5:23-cv-04023-CJW-KEM (N.D. Iowa), and designated as either "Confidential" or "Highly Confidential

– Attorneys’ Eyes Only” under the terms of the protective order in that case. Patent Owner and Petitioner have agreed that previously designated as documents containing confidential information should be filed under seal. *See* Exhibit A. These documents include: Exhibits 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2021, 2022, 2023, 2024, 2025, 2026, 2028, 2029, 2030, 2031, 2035, 2036.

There is good cause for keeping these previously designated documents under seal. These documents contain confidential information and communications related to the development of Petitioner’s and Patent Owner’s products as well as other business development information. Publicly revealing this information could put both parties at a competitive disadvantage in the marketplace. Petitioner does not oppose this information remaining under seal.

C. Declarations Containing Confidential Business Information

Patent Owner has filed under seal declarations from its expert witness and employees which contain confidential information related to Patent Owner’s business. These documents include: Exhibits 2001, 2004, and 2035.

There is good cause for keeping these declarations under seal. Exhibit 2001 is the declaration of Patent Owner’s expert witness Emad Y. Tanbour, Ph.D., which contains descriptions of, and quotations from, many of documents identified in Section B above, all of which were designated as either “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” in the district court proceeding. Exhibit 2004

is the declaration of Jared Amy, a Senior Product Manager for Patent Owner, who includes detailed information about Patent Owner's sales and revenue figures. Exhibit 2035 is the declaration of Gary Hand, a Product Engineering and Quality Manager with knowledge of Patent Owner's products and business interactions, including with foreign manufacturers. All of these declarations include confidential commercial information and could cause competitive harm if disclosed publicly.

D. Documents Containing Patent Owner's Sales and Revenue Figures.

Patent Owner has filed under seal Exhibit 2036, which is a spreadsheet containing detailed financial information regarding its sales of the MicroFridge and associated revenue figures. There is good cause for keeping Exhibit 2036 under seal. The detailed financial information regarding the number of units sold and revenue numbers are highly confidential and could be used by a competitor to gain a competitive advantage in the market. This is the prototypical example of "confidential information" that merits sealing. *See* 77 Fed. Reg. 48756, 48760 (identifying "commercial information" as subject matter that may be sealed).

II. CERTIFICATION OF CONFERENCE

Pursuant to 37 C.F.R. § 42.54(a), Patent Owner certifies that it has in good faith conferred with Petitioner's counsel. Petitioner's counsel does not oppose this motion to seal.

III. REQUEST FOR CONFERENCE CALL WITH THE BOARD

Should the Board not be inclined to grant the present Unopposed Motion to File Under Seal, Patent Owner hereby requests a conference call with the Board to discuss any concerns prior to the Board issuing a decision on the Motion.

IV. CONCLUSION

Patent Owner respectfully requests that the Board grant this Unopposed Motion to File Under Seal, and keep the following documents under seal: Patent Owner's Response, Exhibits 2001, 2004, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2021, 2022, 2023, 2024, 2025, 2026, 2028, 2029, 2030, 2031, 2035, 2036.

Dated: July 16, 2024

/s/ R. Scott Johnson

R. Scott Johnson
Reg. No. 45,792

*Counsel for Patent Owner Intirion
Corporation*

CERTIFICATE OF SERVICE

Per agreement of the parties and pursuant to 37 C.F.R. ¶ 42.105(b), the undersigned certifies that a copy of this Patent Owner's Unopposed Motion to File Under Seal pursuant to 37 C.F.R. §§ 42.14 and 42.54 was served on July 16, 2024, by email on the following:

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Dated: July 16, 2024

/R. Scott Johnson/

R. Scott Johnson
Reg. No. 45,792

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Corporation*

EXHIBIT A

UNITED STATES PATENT AND TRADEMARK OFFICE

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PROTECTIVE ORDER

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Patent Owner and Petitioner have agreed to use certain confidential information previously produced in the District Court proceeding, *Intirion Corporation v. College Products, Inc.*, 5:23-cv-04023-CJW-KEM (N.D. Iowa). The previously produced confidential information shall be marked in this proceeding as marked in the District Court. Confidential information produced for the first time in this proceeding that was not previously produced in the District Court proceeding shall be clearly marked as “PROTECTIVE ORDER MATERIAL.”

2. Access to confidential information used in this proceeding that was previously produced in the District Court proceeding shall be governed according to the Protective Order entered in the District Court. Access to confidential information produced for the first time in this proceeding that was not previously produced in the District Court proceeding is limited to the following individuals who have executed the acknowledgment appended to this order or who previously signed the acknowledgement in the District Court:

- (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 were allowed access to confidential information in the District Court proceeding or 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 in (d)(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 Acknowledgement. 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. 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.

5. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of documents and other 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 publicly available. 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 this proceeding before the Board shall be clearly marked as stated in Section 1 and shall be produced in a manner that maintains its confidentiality.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

7. Standard Acknowledgment of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

[CAPTION]

Standard Acknowledgement 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]

For PATENT OWNER:

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