

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GODBERSEN-SMITH CONSTRUCTION COMPANY
d/b/a GOMACO CORPORATION,
Petitioner,

v.

GUNTERT & ZIMMERMAN CONST. DIV. INC.,
Patent Owner.

Case PGR2024-00026
Patent No. 11,772,723

PETITIONER'S MOTION TO SEAL

I. Introduction

Petitioner Godbersen-Smith Construction Company d/b/a GOMACO Corporation requests that Exhibits 1162, 1166–1170, 1186, 1192, and 1193, as well as the corresponding discussions of these documents in Petitioner’s Reply, filed May 21, 2025, be sealed under 37 C.F.R. § 42.55. There is good cause to seal these documents because they contain sensitive, non-public information that a business would not make public. In addition, the Board previously sealed Exhibits 1162 and 1166–1170. *Godbersen-Smith Const. Co. v. Guntert & Zimmerman Const. Div., Inc.*, IPR2020-01698, Paper 82 at 10 (Apr. 12, 2022). In particular:

- Exhibits 1162 and 1186 contain testimony from G&Z’s CEO regarding confidential details of G&Z’s business;
- Exhibits 1166–1170, 1192, and 1193 are documents marked confidential by G&Z that discuss G&Z’s business plans, customer relations, and pricing; and
- Petitioner’s Reply discusses confidential aspects of these documents as well as other documents previously marked confidential in this proceeding.

To the extent possible, GOMACO has also filed redacted public versions of these documents, including filing a redacted version of Petitioner’s Reply.

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.

In particular, 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 includes sensitive, non-public information that a business would not make public. In particular:

- Exhibits 1162 and 1186 contain testimony from G&Z's CEO regarding confidential details of G&Z's business;
- Exhibits 1166–1170, 1192, and 1193 are documents marked confidential by G&Z that discuss G&Z's business plans, customer relations, and pricing; and
- Petitioner's Reply discusses confidential aspects of these documents as well as other documents previously marked confidential in this proceeding.

Petitioner certifies that, to the best of Petitioner's knowledge, no party has ever published or otherwise made this information public.

IV. Good Cause Exists for Sealing the Confidential Information

The Board routinely seals confidential sensitive internal business information. *See, e.g., Associated British Foods, plc v. Cornell Resch. Found., Inc.*, IPR2019-00579, Paper 123 (PTAB Sept. 2, 2020); *Intuitive Surgical, Inc. v. Ethicon LLC*, IPR2019-00991, Paper 48 (PTAB Jan. 12, 2021). Here, Petitioner's Reply and the exhibits sought to be sealed contain non-public details of G&Z's business, including

internal information on research and development, sales, marketing, and customer relations. Good cause exists to seal and keep this information confidential because it could impact G&Z's market position if made public. Accordingly, as in *Associated British Foods* and *Intuitive Surgical*, the Board should seal and keep this information confidential.

The Board previously found good cause to seal exhibits 1162 and 1166–1170. *See Godbersen-Smith Const. Co. v. Guntert & Zimmerman Const. Div., Inc.*, IPR2020-01698, Paper 82 at 10 (Apr. 12, 2022) (“In summary, in IPR2020-01698, we seal . . . Exhibits 1162 . . . 1165–1175 . . .”).

V. Proposed Protective Order

Petitioner requests entry of the Default Protective Order, which Petitioner previously attached to an earlier motion to seal in this case (*see* Paper 3).

VI. Conclusion

For the reasons set forth above, Petitioner respectfully requests that the Board enter the Default Protective Order and grant this motion to seal.

Respectfully Submitted,

Date: May 21, 2025

By: /Jason Stach/
Jason Stach, Reg. No. 54,464

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PETITIONER'S MOTION TO SEAL** was served on May 21, 2025. The parties have agreed that filing with the Board through the PTAB's P-TACTS system constitutes electronic service on Patent Owner, and Petitioner filed the documents via the PTAB's P-TACTS system. Accordingly, Petitioner electronically served Patent Owner's counsel of record, including James Hannah, Jeffrey H. Price, and Jenna Fuller.

Dated: May 21, 2025

By: /Daniel E. Doku/
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FINNEGAN, HENDERSON, FARABOW,
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