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Paper 50
Date: December 2, 2025

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.

IPR2024-00835 (Patent 11,535,318 B2)
PGR2024-00026 (Patent 11,772,723 B2)[1]

Before ANNETTE R. REIMERS, HYUN J. JUNG, and FRANCES L. IPPOLITO, *Administrative Patent Judges*.

JUNG, *Administrative Patent Judge*.

ORDER
Granting Petitioner's and Patent Owner's Motions to Seal
37 C.F.R. §§ 42.5, 42.14

[1] This Order addresses similar issues in the above-referenced proceedings. The parties are not permitted to use this caption unless authorized by the Board.

I. INTRODUCTION

In IPR2024-00835, Petitioner filed motions to seal (Papers 3, 23, 37), and Patent Owner filed motions to seal (Papers 16, 30). Petitioner moved to seal Exhibits 1030 and 1100–1154 (Paper 3), Exhibits 1162, 1166–1170, 1186, 1192, and 1193 as wells portions of its Reply that discuss these exhibits (Paper 23), and Exhibit 1209 (Paper 37). Patent Owner moved to seal portions of its Response and Exhibits 2010, 2013, 2015, 2024, 2031, 2035, 2036, and 2041 (Paper 16) and portions of its Sur-reply (Paper 30). The parties filed both publicly available and confidential versions of the Response, Reply, Sur-reply and some exhibits. Papers 17, 18 (redacted), 24, 25 (redacted), 31, 32 (redacted); Exs. 1030, 1209, 2015.

In PGR2024-00026, Petitioner filed motions to seal (Papers 3, 25, 40), and Patent Owner filed motions to seal (Papers 20, 32). Petitioner moved to seal Exhibits 1030 and 1100–1154 (Paper 3), Exhibits 1162, 1166–1170, 1186, 1192, and 1193 as wells portions of its Reply that discuss these exhibits (Paper 25), and Exhibit 1209 (Paper 40). Patent Owner moved to seal portions of its Response, certain paragraphs of Exhibit 2005, Exhibits 2007, 2010–2012, 2024, 2031, 2035, and 2036 (Paper 20), and portions of its Sur-reply (Paper 32). The parties filed both publicly available and confidential versions of the Response, Reply, Sur-reply and some exhibits. Papers 18, 19 (redacted), 26, 27 (redacted), 33, 34 (redacted); Exs. 1030, 1209, 2005.

For the reasons provided below, we grant the parties' motions to seal.

II. ANALYSIS

The Board recognizes a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the

public, especially in an *inter partes* review that determines the patentability of claims in an issued patent and therefore affects the rights of the public. *See Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34 at 1–2 (PTAB Mar. 14, 2013). 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; and 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.

We protect only "confidential information" 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 Consolidated Trial Practice Guide ("CTPG") provides:

> The rules [concerning public availability and confidentiality] 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.
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> * * *
>
> 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. 37 C.F.R. § 42.54.

CTPG 19 (Nov. 2019)[2].

Also, confidential information may be made public where the existence of the information is identified in a subsequent written decision. *See* CTPG 21–22; *see also Argentum Pharm. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 8 (PTAB Jan. 19, 2018) (informative) ("*Argentum*") ("This Order shall place both parties on notice that a movant to seal in this proceeding shall assume the risk that its confidential information will become public if relied upon in a final written decision.").

The moving party has the burden of proof in showing it is entitled to the requested relief. *See* 37 C.F.R. § 42.20(c). The standard for granting a motion to seal is "for good cause." 37 C.F.R. § 42.54. "The 'good cause' standard for granting a motion to seal reflects the strong public policy for making all information in an *inter partes* review open to the public." *Argentum* at 3. For a proper motion to seal, a party needs to demonstrate adequately, *in each document*, that

> (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

Argentum at 4. The parties may not stipulate as to any of these items. *See Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00736, Paper 38 at 2–3 (PTAB Apr. 14, 2015).

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[2] Available at https://www.uspto.gov/TrialPracticeGuideConsolidated.

A. IPR2024-00835

In IPR2024-00835, according to Petitioner, Exhibits 1100–1154, excerpts of which are in Exhibit 1030, contain corporate information and documents that include confidential sales information (Paper 3, 2); Exhibits 1162, 1166–1170, 1186, 1192, and 1193 have testimony and documents that include confidential business information (Paper 23, 3), and Exhibit 1209 includes slides that contain information subject to a motion to seal (Paper 37, 3). Petitioner certifies that, to the best of its knowledge, the information has not been published or otherwise been made public. Paper 3, 2; Paper 23, 3; Paper 37, 3.

According to Patent Owner, Exhibits 2010, 2013, 2015, 2024, 2031, 2035, 2036, and 2041, and portions of its Response and Sur-Reply contain confidential business information. Paper 16, 1–4; Paper 30, 1–3. Patent Owner certifies that, to the best of its knowledge, the information has not been made public. Paper 16, 4; Paper 30, 3.

The parties have shown good cause for granting their motions to seal. Paper 3, 3–4; Paper 16, 3–4; Paper 23, 3–4; Paper 30, 1–3; Paper 37, 3–4. We have reviewed the information in these motions and exhibits and find that keeping the information confidential outweighs the public's need to access this information.

B. PGR2024-00026

In PGR2024-00026, according to Petitioner, Exhibits 1100–1154, excerpts of which are in Exhibit 1030, contain corporate information and documents that include confidential sales information (Paper 3, 3); Exhibits 1162, 1166–1170, 1186, 1192, and 1193 have testimony and documents that include confidential business information (Paper 25, 3), and Exhibit 1209

includes slides that contain information subject to a motion to seal (Paper 40, 3). Petitioner certifies that, to the best of its knowledge, the information has not been published or otherwise been made public. Paper 3, 2; Paper 25, 3; Paper 40, 3.

According to Patent Owner, Exhibits 2005, 2007, 2010–2012, 2024, 2031, 2035, and 2036, and portions of its Response and Sur-Reply contain confidential business information. Paper 20, 1–4; Paper 32, 1–3. Patent Owner certifies that, to the best of its knowledge, the information has not been made public. Paper 20, 4; Paper 32, 3.

The parties have shown good cause for granting their motions to seal. Paper 3, 3–4; Paper 20, 3–4; Paper 25, 3–4; Paper 32, 2–3; Paper 40, 3–4. We have reviewed the information in these motions and exhibits and find that keeping the information confidential outweighs the public's need to access this information.

C. Default Protective Order

We grant the parties' requests to enter the default Protective Order in IPR2024-00835 (Paper 3, 4; Paper 16, 4; Paper 23, 4; Paper 30, 3; Paper 37, 4) and in PGR2024-00026 (Paper 3, 4; Paper 20, 4; Paper 25, 4; Paper 32, 3; Paper 40, 4).

III. ORDER

Accordingly, it is:

ORDERED that Petitioner's motions to seal in IPR2024-00835 (Papers 3, 23, 37) are granted;

FURTHER ORDERED that Patent Owner's motions to seal in IPR2024-00835 (Paper 16, 30) are granted;

FURTHER ORDERED that Petitioner's motions to seal in PGR2024-00026 (Papers 3, 25, 40) are granted;

FURTHER ORDERED that Patent Owner's motions to seal in PGR2024-00026 (Papers 20, 32) are granted;

FURTHER ORDERED that the Default Protective Order is entered into IPR2024-00835 and PGR2024-00026;

FURTHER ORDERED that Papers 17, 24, and 31 and Exhibits 1030, 1100–1154, 1162, 1166–1170, 1186, 1192, 1193, 1209, 2010, 2013, 2015, 2024, 2031, 2035, 2036, and 2041 in IPR2024-00835 are sealed; and

FURTHER ORDERED that Papers 18, 26, and 33 and Exhibits 1030, 1100–1154, 1162, 1166–1170, 1186, 1192, 1193, 1209, 2005, 2007, 2010–2012, 204, 2031, 2035, and 2036 in PGR2024-00026 are sealed.

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