

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Esselte Corporation et al.
Petitioners,

v.

DYMO
Patent Owner.

Case IPR2015-00766
Patent 7,990,567

MOTION TO SEAL UNDER 37 C.F.R. § 42.14

Pursuant to 35 U.S.C. § 316 and 37 C.F.R. § 42.14, DYMO (the “Patent Owner”) requests that the Stock Purchase Agreement (filed as Exhibit 2002) and the Disclosure Schedule pursuant to the Stock Purchase Agreement (filed as Exhibit 2003) be treated as Protective Order Material and be sealed such that it is available to the Board and Parties only.¹ The Stock Purchase Agreement (Exhibit 2002) is an agreement between Newell Rubbermaid Inc. (parent company of Patent Owner) and Petitioner Esselte AB that transferred to Newell Rubbermaid Inc. the “Intellectual Property” set forth in the Disclosure Schedule to the Stock Purchase Agreement. (Exhibit 2003.) The Patent Owner believes the default protective order set forth in the Office Patent Trial Practice Guide is sufficient in this case. The Patent Owner certifies that it has in good faith conferred or attempted to confer with Petitioners in an effort to come to agreement as to the scope of the proposed protective order for this *inter partes* review to comply with 37 C.F.R. § 42.54. In further compliance with 37 C.F.R. § 42.54, Patent Owner has attached a copy of the default protective order set forth in the Office Patent Trial Practice Guide as Exhibit A to this motion.

¹ Patent Owner conferred with Petitioners and Petitioners agree that Exhibits 2002 and 2003 should be treated as Protective Order Material.

Exhibits 2002 and 2003 do not form part of or inform a patentability analysis of the challenged patent and is solely between the Parties to this proceeding. Further, Patent Owner certifies that none of the alleged confidential information contained in Exhibits 2002 or 2003 has been made publically available. As a result, protecting the Parties' interest in protecting truly sensitive information in this case only minimally impacts the public's interest in maintaining a complete file history. Office Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012) ("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.")

Furthermore, Patent Owner requests that the "PROTECTIVE ORDER MATERIAL" version of the Patent Owner's Preliminary Response be sealed since that version includes an unredacted discussion of the terms of Exhibits 2002 and 2003 and therefore should be sealed for the same reasons these Exhibits should be sealed. Patent Owner has filed a public version of the Patent Owner's Preliminary Response that redacts the confidential information. While Patent Owner submitted the redacted version as Board and Parties Only, Patent Owner submits that this version may be made public once this Motion to Seal and the appropriate scope of the protective order is decided.

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Respectfully submitted,

Date: June 16, 2015

/W. Karl Renner/

W. Karl Renner

Reg. 41,265

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on June 16, 2015, a complete and entire copy of this Patent Owner's Motion to Seal were provided via email, to the Petitioner by serving the correspondence email addresses of record as follows:

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EXHIBIT A

PROTECTIVE ORDER

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

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL.”

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

(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 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) *Other Employees of a Party*. Employees, consultants or other persons performing work for a party, other than in-house counsel and in-house counsel’s support staff, who sign the Acknowledgement 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. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

(F) *The Office*. Employees and representatives of the 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.

(G) *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.

3. 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.

4. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) *Documents and Information Filed With the Board.*

(i) A party may file documents or information with the Board under seal, together with a non-confidential description of the nature of the confidential information that is under seal and the reasons why the information is confidential and should not be made available to the public. The submission shall be treated as confidential and remain under seal, unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that the documents or information do not to 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 available to the public. The nonconfidential 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, upon motion of a party and after a hearing on the issue, or *sua sponte*, 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*. Information designated as confidential that is disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains its confidentiality.

(j) *Standard Acknowledgement of Protective Order*. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

**Standard Acknowledgment 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.

Signed _____