

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARKEMA FRANCE,
Petitioner

v.

HONEYWELL INTERNATIONAL INC.
Patent Owner

Case IPR2015-00916
U.S. Patent No. 8,710,282

PATENT OWNER'S MOTION TO SEAL

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.14, Patent Owner Honeywell International Inc. (“Patent Owner”), and pursuant to the proposed Protective Order filed contemporaneously as Exhibit 2044, hereby moves for entry of the protective order and to seal Exhibits 2007-2035, 2039 and 2042 (“Proposed sealed Documents”). The Proposed Sealed Documents were filed contemporaneously with this Motion.

II. PROTECTIVE ORDER

As part of this motion to seal, Patent Owner respectfully requests entry of the Protective Order found in Exhibit 2044. The parties have conferred and agree to the entry of a protective order in this proceeding.

Filed contemporaneously as Exhibit 2044 and 2045 are clean and red-lined versions, respectively, of Patent Owner's proposed stipulated protective order to be entered in these proceedings. Exhibit 2045 illustrates the differences between the Board's default protective order and Patent Owner's proposed order (Exhibit 2044).

The additional provisions found in ¶ 2 of the proposed order (Exhibit 2044) define what information can be designated as “highly confidential” information, and the additional provisions found in ¶ 3 of the proposed order define what information cannot be designated as “confidential” or “highly confidential” information. The parties have agreed that the protected documents may be used in

this proceeding or other proceedings between the Parties related to U.S. Patent 8,710,282 (¶ 6). The additional provisions found in ¶ 5 are warranted to reflect the proper treatment of “highly confidential” information. That is, ¶¶ 5(A) and 5(B) of Patent Owner’s proposed order limit the distribution of “highly confidential” information to recipient’s outside counsel (¶ 5(A)), experts (¶ 5(B)), the office (¶ 5(C)), and support personnel (¶ 5(D)). Such a higher standard is necessary to reflect the agreement between the parties relating to persons who can view certain confidential information. Other in-house attorneys and other employees of Petitioner, as would be allowed under the more general provisions the Board’s default protective order, are not permitted access to “highly confidential” information. For these reasons, Patent Owner’s proposed stipulated protective order should be entered in these proceedings.

III. BASIS FOR SEALING CERTAIN EXHIBITS

The *Office Patent Trial Practice Guide* provides that “[t]he 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.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, those “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.” *Id.* (citing

37 C.F.R. § 42.54); *see also Illumina v. Columbia University*, IPR2013-00011, Paper 66, Aug. 12, 2013 Dec. (granting a motion to seal “technical and business information” and “product development information”).

The Proposed Sealed Documents contain information that Patent Owner maintains is privileged, proprietary, sensitive, and/or confidential business, technical, financial, and/or strategy information further described below.

(1) Exhibits 2007, 2008, 2010, 2011, 2012, 2013, 2015, 2016, 2017, 2022, 2024, 2029, 2030, 2031, 2034, 2035, 2039. These documents contain Patent Owner Trade Secret Information, Attorney Client Privileged Information, and Confidential Business Information, and should be classified as Highly Confidential. These documents include: (1) Patent Owner's internal processes; (2) Patent Owner's testing data relating to 1234yf or other materials, (2) Patent Owner's internal project permits; (3) monthly reports on activities; and (4) various internal requirements documents. Patent Owner submits that publically disclosing its confidential trade secrets and business information, discussed in these documents, especially to a competitor, is not necessary for the Board to reach a written decision in these proceedings. Indeed, the Board may reach a decision with respect to the antedating the references, without the

need to disclose to the public various information contained in these documents.

- (2) Exhibits 2009, 2014, 2018, 2019, 2020, 2021, 2023, 2025, 2026, 2027, and 2028. These documents contain Patent Owner Trade Secret Information and Confidential Business Information, and should be classified as Highly Confidential. These documents include: (1) Patent Owner's internal processes; (2) Patent Owner's testing data relating to 1234yf, (2) Patent Owner's internal project permits; (3) monthly reports on activities; and (4) various internal requirements documents. Patent Owner has redacted confidential business information from these documents, where the confidential business information is related to other molecules, processes, or projects outside of the scope of the inquiry with regard to the patent at issue. Patent Owner submits that publically disclosing its confidential trade secrets discussed in these documents, especially to a competitor, is not necessary for the Board to reach a written decision in these proceedings. Indeed, the Board may reach a decision with respect to the antedating the references, without the need to disclose to the public various information contained in these documents.
- (3) Exhibits 2032, 2033, and 2042. These documents contain Patent Owner Attorney Client Privileged Information and should be classified as

Highly Confidential. The documents have been redacted to mask certain Attorney Client Privileged Information.

The aforementioned confidential documents provide additional, more detailed, evidence about Patent Owner's developments to support and corroborate the publically available documents (i.e., the Board can reference the publically available documents in its final decision). For example, many of the documents are used to corroborate testimony by declarants in the case. Accordingly, the Board may rely on the testimony and quotations found in the publically available declarations in this case. For example, Dr. Tung, Angela Goodies, Dan Merkel and Dr. Lousenberg provide direct testimony with regard to actives performed, and interpretation of the exhibits, related to reduction to practice. That is, the Board may rely on these declarations in determining whether the Patent Owner antedated the references. That said, all of the aforementioned documents are necessary to demonstrate Patent Owner's ability to antedate the references and the Patent Owner would be prejudiced if they were released publically or provided to Petitioner, a competitor in the field.

For the foregoing reasons, Patent Owner's confidential information as described herein should maintain its "highly confidential" designation and be kept under seal.

IV. CERTIFICATION PURSUANT TO 37 C.F.R. § 42.54

Patent Owner, through the undersigned, hereby certifies that it has in good faith conferred or attempted to confer with Petitioner in an effort to resolve all disputes relative to sealing the aforementioned documents. No agreement was reached as the motion to seal.

Dated: January 22, 2015

Respectfully submitted,

/Bruce J. Rose/

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Patent Owner Honeywell International Inc.

Certificate of Service

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that, on January 22, 2015, a true copy of the foregoing **PATENT OWNER'S MOTION TO SEAL** and its respective exhibits, was served by electronic mail on:

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Allen R. Baum
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