

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARKEMA FRANCE,  
Petitioner,

v.

HONEYWELL INTERNATIONAL, INC.,  
Patent Owner.

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Case IPR2015-00916  
Patent 8,710,282 B2

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Before JO-ANNE M. KOKOSKI, JON B. TORNQUIST, and  
ROBERT A. POLLOCK, *Administrative Patent Judges*.

KOKOSKI, *Administrative Patent Judge*.

DECISION  
Motions to Seal  
*37 C.F.R. §§ 42.1 and 42.54*

Honeywell International, Inc. (“Patent Owner”) filed a motion to seal, along with a request for entry of a protective order. Paper 22. Arkema France (“Petitioner”) filed four motions to seal. Papers 25, 29, 40, 43. Each motion is discussed in detail in turn.

### *Discussion*

The Board’s standards for granting motions to seal are discussed in *Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001 (PTAB Mar. 14, 2013) (Paper 34). In summary, there is a strong public policy for making all information filed in *inter partes* review proceedings open to the public. *Id.* The standard for granting a motion to seal is “good cause.” 35 U.S.C. §§ 316(a)(1), 316(a)(7); 37 C.F.R. §§ 42.14, 42.54. The party asserting confidentiality bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). This includes showing that the information is truly confidential, and thus such confidentiality outweighs the strong public interest in having an open record.

We remind the parties of the expectation that confidential information relied upon or identified in a final written decision will be made public. *See* Office Trial Practice Guide, 77 Fed. Reg. 48756, 48761 (Aug. 14, 2012). Confidential information that is subject to a protective order ordinarily becomes public 45 days after final judgment in a trial. A party seeking to maintain the confidentiality of the information may file a motion to expunge the information from the record prior to the information becoming public. 37 C.F.R. § 42.56.

#### *1. Patent Owner’s January 22, 2016 Motion to Seal (Paper 22)*

Patent Owner filed a motion to seal Exhibits 2007–2035, 2039, and 2042. Paper 22, 1. The motion includes a request to enter the proposed

modified protective order found in Exhibit 2044. *Id.* Petitioner did not file an opposition to Patent Owner’s motion to seal or request to enter the modified protective order. *See* 37 C.F.R. § 42.25(a)(1).

*a. Entry of Proposed Protective Order*

Patent Owner represents that “[t]he parties have conferred and agree to the entry of a protective order in this proceeding.” Paper 22, 1. With its motion, Patent Owner submitted a red-lined version of the modified protective order showing the changes made to the Board’s default protective order. Ex. 2045. The changes include the addition of a “highly confidential” designation for “information that is current or future business or technical trade secrets, the disclosure of which is likely to significantly harm that party’s competitive position, or the disclosure of which would contravene an obligation of confidentiality to a third person.” *Id.* ¶ 2. Patent Owner contends that the “proposed order limit[s] distribution of ‘highly confidential’ information to recipient’s outside counsel (¶ 5(A)), experts (¶ 5(B)), the office (¶ 5(C), and support personnel (¶ 5(D)).” Paper 22, 2. According to Patent Owner, this “higher standard is necessary to reflect the agreement between the parties relating to persons who can view certain confidential information,” such that “[o]ther in-house attorneys and other employees of Petitioner, as would be allowed under the more general provisions [of] the Board’s default protective order, are not permitted access to ‘highly confidential’ information.” *Id.*

We grant Patent Owner’s request to enter the modified protective order in Exhibit 2044 because the parties agreed on the modification and the modification will not inhibit either party from fully prosecuting its case.

*b. Motion to Seal*

Patent Owner moves to seal Exhibits 2007–2035, 2039, and 2042 (“the Proposed Sealed Documents”). Paper 22, 1. Patent Owner states that “[t]he Proposed Sealed Documents contain information that Patent Owner maintains is privileged, proprietary, sensitive, and confidential business, technical, financial, and/or strategy information.” *Id.* at 3. The Proposed Sealed Documents include information relating to Patent Owner’s testing data, internal project permits, monthly research activities, and patent drafting, among other things. *See id.* at 3–4. Patent Owner states that the Proposed Sealed 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.” *Id.* at 5.

We have considered Patent Owner’s arguments to seal the Proposed Sealed Documents, and the information sought to be sealed by Patent Owner. We determine that Patent Owner has demonstrated good cause for sealing Exhibits 2007–2035, 2039, and 2042 pursuant to the protective order entered in this proceeding. *See* 37 C.F.R. § 42.54.

The motion to seal will be conditionally granted for the duration of the proceeding. If the final written decision in this proceeding substantively relies on information in a sealed document, the document will be unsealed by an Order of the Board. If any sealed document contains information that is not substantively relied on in the final written decision, the sponsoring party may file a motion to expunge that document from the official record. *See* 37 C.F.R. § 42.56.

2. *Petitioner's February 25, 2016 Motion to Seal (Paper 25)*

Petitioner filed a motion to seal Exhibit 1020, “the unredacted court reporter transcript of the conference call held February 24, 2016 between the parties and the Board.” Paper 25, 1. Patent Owner did not file an opposition to Petitioner’s motion.

Petitioner states that “[d]uring this conference call, the parties discussed the substance of some exhibits Patent Owner previously moved to seal (see Paper 22) marked ‘Highly Confidential—Protective Order Material’ pursuant to the parties’ agreed Protective Order (Exs. 2044 and 2045).” Paper 25, 2. Petitioner filed a non-confidential, redacted version of the conference call transcript as Exhibit 1019. *Id.* at 1 n.1.

The information Petitioner seeks to seal is related to Patent Owner’s confidential information. Petitioner, therefore, is not in the position to explain sufficiently why Patent Owner’s information is confidential. That Patent Owner’s designated certain information confidential is not enough to establish good cause for sealing Exhibit 1020.

As set forth above, however, we determined that Patent Owner demonstrated good cause for sealing Exhibits 2007–2035, 2039, and 2042, which includes the exhibits discussed in Exhibit 1020. For the same reasons, we determine that good cause also exists to seal Exhibit 1020.

The motion to seal will be conditionally granted for the duration of the proceeding. If the final written decision in this proceeding substantively relies on information in a sealed document, the document will be unsealed by an Order of the Board. If any sealed document contains information that is not substantively relied on in the final written decision, the sponsoring

party may file a motion to expunge that document from the official record.  
*See* 37 C.F.R. § 42.56.

3. *Petitioner's March 3, 2016 Motion to Seal (Paper 29)*

Petitioner filed a motion to seal portions of its Motion for Additional Discovery (Paper 31). Paper 29, 1. Patent Owner did not file an opposition to Petitioner's motion.

Petitioner states that "[t]he Motion for Additional Discovery discusses the substance of some exhibits Patent Owner previously moved to seal (see Paper 22) and marked 'Highly Confidential—Protective Order Material' pursuant to the parties' agreed Protective Order (Exs. 2044 and 2045)." Paper 29, 1. Petitioner submitted a non-confidential, redacted version of the Motion for Additional Discovery as Paper 30.

It is Petitioner's burden to establish why the information sought to be placed under seal constitutes confidential information. Petitioner only states that the information was designated highly confidential pursuant to the protective order and are the subject of a motion to seal filed by Patent Owner. Paper 29, 1. This does not satisfy Petitioner's burden, because Petitioner has not presented any explanation as to why portions of the Motion for Additional Discovery are confidential and why there is good cause for granting the motion.

However, because we determined that Patent Owner has established good cause for sealing Exhibits 2007–2035, 2039, and 2042, which encompasses the exhibits discussed in the Motion for Additional Discovery, we also determine that good cause exists to seal Paper 31 pursuant to the protective order entered in this proceeding.

The motion to seal will be conditionally granted for the duration of the proceeding. If the final written decision in this proceeding substantively relies on information in a sealed document, the document will be unsealed by an Order of the Board. If any sealed document contains information that is not substantively relied on in the final written decision, the sponsoring party may file a motion to expunge that document from the official record. *See* 37 C.F.R. § 42.56.

4. *Petitioner's April 21, 2016 Motion to Seal (Paper 40)*

Petitioner filed a motion to seal “Exhibit 1023 containing the unredacted court reporter transcript of the conference call held April 12, 2016 between the parties and the Board.” Paper 40, 1. Patent Owner did not file an opposition to Petitioner’s motion.

Petitioner states that the April 12, 2016 conference call was held to discuss Petitioner’s request to compel production of an unredacted copy of a whitepaper produced by Patent Owner. Paper 40, 2. Petitioner further states that the redacted copy of the whitepaper produced by Patent Owner was marked “Highly Confidential—Protective Order Material,” and that “[d]uring the conference call, Patent Owner discussed the substance of the redacted portions of the whitepaper.” *Id.* Petitioner filed a non-confidential, redacted version of the conference call transcript as Exhibit 1022. *Id.* at 1 n.1.

It is Petitioner’s burden to establish why the information sought to be placed under seal constitutes confidential information. Petitioner only states that the information was designated highly confidential pursuant to the protective order. Paper 40, 1. This does not satisfy Petitioner’s burden, because Petitioner has not presented sufficient explanation as to why

portions of Exhibit 1023 are confidential and why there is good cause for granting the motion. Moreover, the information Petitioner seeks to seal is related to Patent Owner's confidential information. Petitioner, therefore, is not in the position to explain sufficiently why Patent Owner's information is confidential.

We therefore determine that Petitioner has not demonstrated good cause to seal Exhibit 1023, and deny Petitioner's motion to seal that exhibit. A party may file a renewed motion to seal within 14 days of this Decision explaining why the information truly is confidential. Exhibit 1023 will remain under provisional seal until consideration of any such motion.

5. *Petitioner's May 6, 2016 Motion to Seal (Paper 43)*

Petitioner filed a motion to seal its Reply (Paper 41) and Exhibits 1024, 1025, 1032, 1033, 1036, and 1037. Paper 43, 1. Patent Owner did not file an opposition to Petitioner's motion.

Petitioner states that Exhibits 1024 and 1025, the unredacted transcripts of the deposition of Dr. Robert D. Lousenberg, include questions "regarding the substance of exhibits Patent Owner previously moved to seal (see Paper 22) and marked as 'Highly Confidential—Protective Order Material' pursuant to the parties' agreed Protective Order (Ex. 2044 and 2045)." Paper 43, 2. Petitioner filed non-confidential, redacted versions of the Lousenberg deposition transcript as Exhibits 1026 and 1027. *Id.* at 2 n.2. Petitioner states that "to the extent that the Board grants Patent Owner's motion to seal, the Board should also grant Petitioner's motion to seal portions of the transcript that discuss the substance of those sealed exhibit." *Id.* at 2.



With respect to Exhibits 1032, 1033, and 1037, Petitioner states that “Patent Owner previously filed as Exhibit 2042 a document similar to Exhibits 1037 entitled ‘Meeting Minutes from PC Meeting held July 12, 2010,’ which Patent Owner marked as ‘Highly Confidential—Protective Order Material’ and moved to seal.” Paper 43, 3. Because Exhibits 1032, 1033, and 1037 are PC meeting minutes similar to those in Exhibit 2042, Petitioner states that “[t]o the extent that the Board grants Patent Owner’s motion to seal Exhibit 2042, Exhibits 1032, 1033, and 1037 should also be sealed.” *Id.*

Petitioner states that “Exhibit 1036 is a copy of provisional application no. 61/392,242 with highlighting added to designate whether the content originally appeared in various other documents,” including “the invention disclosure filed by Patent Owner as Exhibit 2029, the detailed disclosure filed by Patent Owner as Exhibit 2030, and the priority patent application no. 13/195,429 (Ex. 1014).” Paper 43, 3. Petitioner states that Patent Owner marked Exhibits 2029 and 2030 as highly confidential pursuant to the protective order, and also moved to seal Exhibits 2029 and 2030. *Id.* Thus, Petitioner requests that, should the Board grant Patent Owner’s motion to seal Exhibits 2029 and 2030, “Exhibit 1036 should also be sealed.” *Id.* at 4.

With respect to its Reply (Paper 41), Petitioner states that it discusses the substance of Exhibits 1024, 1025, 1032, 1033, 1036, and 1037, “as well as the substance of other exhibits Patent Owner has previously moved to seal.” Paper 41, 4. Petitioner filed a non-confidential, redacted version of its Reply as Paper 42.

The information Petitioner seeks to seal is related to Patent Owner's confidential information. However, because we determined that Patent Owner has established good cause for sealing Exhibits 2007–2035, 2039, and 2042, we also determine that good cause exists to seal Exhibits 1024, 1025, 1032, 1033, 1036, and 1037 and Petitioner's Reply (Paper 41) pursuant to the protective order entered in this proceeding.

The motion to seal will be conditionally granted for the duration of the proceeding. If the final written decision in this proceeding substantively relies on information in a sealed document, the document will be unsealed by an Order of the Board. If any sealed document contains information that is not substantively relied on in the final written decision, the sponsoring party may file a motion to expunge that document from the official record. *See* 37 C.F.R. § 42.56.

#### ORDER

In consideration of the foregoing, it is

ORDERED that the Proposed Modified Protective Order (Ex. 2044) is hereby entered and shall govern the conduct of this proceeding unless otherwise modified;

FURTHER ORDERED that Patent Owner's January 22, 2016 Motion to Seal (Paper 22) is *conditionally granted*;

FURTHER ORDERED that Petitioner's February 25, 2015 Motion to Seal (Paper 25) is *conditionally granted*;

FURTHER ORDERED that Petitioner's March 3, 2016 Motion to Seal (Paper 29) is *conditionally granted*;

FURTHER ORDERED that Petitioner's April 21, 2015 Motion to Seal (Paper 40) is *denied without prejudice*;

FURTHER ORDERED that either or both parties are authorized to file a renewed motion to seal for Exhibit 1022 within 14 days of the entry of this Order;

FURTHER ORDERED that Petitioner's May 6, 2016 Motion to Seal (Paper 43) is *conditionally granted*; and

FURTHER ORDERED that the following documents shall be sealed as "Board and Parties Only," and will be kept under seal unless and until we refer to material in the papers or exhibits in a final written decision: Exhibits 1020, 1024, 1025, 1032, 1033, 1036, 1037, 2007–2035, 2039, and 2042, and Papers 31 and 41.

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