

Filed on behalf of: Unverferth Manufacturing Co., Inc.

Paper _____

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Date filed: February 3, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

J&M MANUFACTURING CO., INC.,
Petitioner,

v.

UNVERFERTH MANUFACTURING CO., INC.,
Patent Owner.

Case IPR2016-00064
Patent 6,176,504

PATENT OWNER'S MOTION TO SEAL

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner, Unverferth Manufacturing Co., Inc. (“Unverferth”), respectfully submits this Motion to Seal Patent Owner’s Preliminary Response. Patent Owner also moves for the entrance of the Board’s Default Standing Protective Order in this proceeding. Petitioner, J&M Manufacturing Co., Inc. (“J&M”), does not oppose the motion to seal and agrees to the use of the Board’s Default Standing Protective Order.

I. Background

At the time J&M filed the petition for *inter partes* review of the ’504 patent, Unverferth and J&M were parties to four different district court litigations. On November 2, 2015, Unverferth and J&M participated in a Settlement Conference before the Honorable Jack Zouhary of the U.S. District Court for the Northern District of Ohio. During the settlement conference, the parties reached a global settlement (“November 2 Settlement Agreement”). Both parties consider the terms of the settlement agreement to be confidential. Indeed, Judge Zouhary sealed the transcript reflecting the parties’ settlement agreement and designated it “Attorney’s Eyes Only.”

II. Patent Owner Asserts That Good Cause Exists For Sealing Certain Confidential Information

Patent Owner submits that its Preliminary Response contains Protective Order Material that should be maintained under seal. Specifically, Patent Owner’s Preliminary Response references terms of the parties’ November 2 Settlement

Agreement, that both parties consider confidential, sensitive information, and which was maintained under seal by Judge Zouhary. Such information should not be made available to the public, including competitors of Patent Owner and Petitioner. Accordingly, Patent Owner asks that its Preliminary Response be sealed. Patent Owner certifies that it is not aware of the subject matter that it seeks to keep confidential having ever been made public and that efforts have been undertaken by the appropriate parties to maintain the confidentiality of the subject matter.

III. Certification of Conference

Pursuant to 37 C.F.R. § 42.54(a), Patent Owner hereby certifies that it has conferred in good faith with Petitioner as to the scope of the protection sought. Petitioner does not oppose Patent Owner's filing of this Motion to Seal. Further, Patent Owner certifies that the parties have agreed to be bound by the terms of the Default Standing Protective Order attached herewith as Appendix A.

IV. Default Standing Protection Order

The parties agree to the terms of the Default Standing Protective Order attached herewith as Appendix A. Accordingly, Patent Owner respectfully requests entry of the Default Standing Protective Order.

V. Conclusion

For the above reasons, Patent Owner respectfully requests that its Preliminary Response be placed under seal. Patent Owner further requests that this proceeding be governed by the terms of the Default Standing Protective Order.

Respectfully submitted,

Date: February 3, 2016

By: /Joseph A. Hynds/
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*Counsel for Patent Owner
Unverferth Manufacturing Co., Inc.*

APPENDIX A

UNITED STATES PATENT AND TRADEMARK OFFICE

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PROTECTIVE ORDER

This 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 non-confidential 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.

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

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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 _____

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2016, a true and correct copy of the foregoing PATENT OWNER'S MOTION TO SEAL was served, via electronic mail upon the following counsel for Petitioner J&M Manufacturing Co., Inc.:

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