

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CANFIELD SCIENTIFIC, INC.,
Petitioner,

v.

MELANOSCAN, LLC,
Patent Owner.

Case IPR2017-02125
Patent 7,359,748 B1

Before JOHN C. KERINS, MICHAEL W. KIM, and SCOTT C. MOORE,
Administrative Patent Judges.

MOORE, Administrative Patent Judge.

ORDER

Granting Motion for Protective Order and Sealing Documents
37 C.F.R. §§ 42.5, 42.54

I. INTRODUCTION

On December 3, 2018, Patent Owner filed a Revised Motion to Seal (Paper 58, “Motion”). In its Motion, Patent Owner seeks entry of a protective order and asks the Board to seal Papers 33, 42, 46, and 49, and Exhibits 1036 and 1039. Patent Owner also submits a Proposed Protective Order (Exhibit 2032) that is signed by counsel for both parties. Patent Owner represents that the Proposed Protective Order is the “default protective order” set forth in the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,771 (Aug. 14, 2012) (“Trial Practice Guide”).

Petitioner declined to consent to the relief sought in Patent Owner’s Motion. Motion, 12–13. Petitioner, however, previously informed the Board that it agrees to the terms of the Proposed Protective Order. Paper 36, 1. Petitioner also did not file an Opposition to the Motion.

For the reasons set forth below, the Motion is *granted*.

II. REQUEST FOR ENTRY OF PROTECTIVE ORDER

As discussed below, we determine that Patent Owner has demonstrated a need for a protective order to protect trade secrets and personal medical information. Here, the Parties have agreed to the terms of the Proposed Protective Order, which is substantively identical to the Board’s default protective order. The parties also have exchanged materials pursuant to the terms of this Proposed Protective Order as contemplated in the Trial Practice Guide. *See* 77 Fed. Reg. at 48,761. In these circumstances, we find good cause for entry of the Proposed Protective Order.

III. REQUEST TO SEAL PAPERS AND EXHIBITS

There is a strong public policy that favors making information filed in an *inter partes* review open to the public. *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, Case IPR2012-00001, slip op. 1–2 (PTAB Mar. 14, 2013) (Paper 34). The standard for granting a motion to seal is good cause. 37 C.F.R. § 42.54. That standard includes showing that the information addressed in the motion to seal is truly confidential, and that such confidentiality outweighs the strong public interest in having the record open to the public. *See Garmin*, IPR2012-00001, Paper 34, 2–3. Based on the Motion, the supporting Declaration, and the documents sought to be sealed, good cause exists to seal the Papers and Exhibits identified in the Motion.

Redacted public versions of Papers 33, 42, 46, and 49, and Exhibits 1036 and 1039, have been filed with the Board. *See* Papers 35, 43, 45, 50; Exhs. 1036 and 1039 (redacted versions). Patent Owner alleges that all of the redacted material except for one portion falls into one of the following five categories of trade secret information:

- (1) Financial information relating to Melanoscan's business;
- (2) Melanoscan's marketing and sales information, including customer information and financial information relating to its sales and business transactions;
- (3) Melanoscan's confidential business practices, including practices involving the use of its commercial products and research devices to examine, diagnose and treat patients;
- (4) Details of operation, processes and functioning of Melanoscan's commercial products and research devices; and
- (5) Confidential procedures, protocols, data and results of research and development conducted by Melanoscan.

Motion, 2. Patent Owner contends that the one remaining portion of redacted material is personal medical information that was disclosed during a deposition. *Id.* at 4.

Patent Owner supports its assertions with a detailed declaration from Dr. Rhett Drugge. Exhibit 2032. This Declaration explains why each portion of redacted material falls into one of these five categories of trade secret information or constitutes personal medical information. Exhibit 2032, ¶¶ 4–16.

We have reviewed the materials redacted from Papers 33, 42, 46, and 49, and Exhibits 1036 and 1039, and find Patent Owner has shown good cause to seal the redacted portions of these Papers and Exhibits. Patent Owner has shown that these redacted materials are trade secrets and personal medical information that are truly confidential, and that disclosure of these materials would result in concrete harm to Patent Owner's business interests and Dr. Drugge. Given the nature of the information at issue here (trade secrets and personal medical information), we are persuaded that Patent Owner's interest in maintaining the confidentiality of this material outweighs the strong public interest in having an open record.

The Parties are reminded, however, that information subject to a protective order ordinarily becomes public 45 days after final judgment in a trial, unless a motion to expunge is granted. 37 C.F.R. § 42.56; Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012).

IV. ORDER

For the above reasons, it is

ORDERED that the Proposed Protective Order (Exhibit 2032) is entered, and all parties and their counsel shall comply with the terms of this Protective Order; and

FURTHER ORDERED that Papers 33, 42, 46, and 49, and Exhibits 1036 and 1039, remain sealed in the Board's document filing system.

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