

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC,
Petitioner,

v.

MOTION OFFENSE, LLC,
Patent Owner.

IPR2020-00705
Patent 10,013,158 B1

Before PATRICK M. BOUCHER, KIMBERLY McGRAW, and
NABEEL U. KHAN, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge*.

ORDER

Motion to Seal and for Entry of Protective Order
37 C.F.R. §§ 42.14, 42.54

Petitioner filed an unopposed Motion to Seal and for Entry of Protective Order in this proceeding. Paper 9 (“Mot.”). The parties agreed to a proposed Protective Order, which differs from the Board’s Default Protective Order

in that the default Protective Order has been modified to include the ‘PROTECTIVE ORDER MATERIAL – ATTORNEY’S EYES ONLY’ designation for any documents, materials, testimony, or information that the designating party believes, in good faith, constitutes or contains trade secrets or other non-public, highly sensitive confidential research, development, technical, business, and/or financial information that has not become public. The proposed protective order also specifies access to such ATTORNEY’S EYES ONLY information.

Id. at 4–5.

According to the Motion, such changes to the Board’s Default Protective Order “are designed to limit access to certain materials by each party’s representatives and in-house counsel with competitive decision-making authority.” *Id.* at 5. A copy of the agreed-upon proposed Protective Order is attached as an exhibit to the Motion, including a redlined version that identifies deviations from the Board’s Default Protective Order. *Id.*, Apps. A, B.

With its Motion, Petitioner moves to seal Patent Owner’s Preliminary Response, which was filed in the record as Paper 8, as well as supporting Exhibits 2002 and 2004. *See id.* at 5. According to Petitioner, such documents contain “highly confidential, competitively-sensitive information relating to Unified’s members.” *Id.* Nonconfidential versions of these documents were submitted as appendices to the Motion, with redactions that Petitioner characterizes as “minimal, and limited in nature and scope to the confidential data.” *Id.* at 5, Apps. C–E.

“The Board may, for good cause, issue an order to protect a party from disclosing confidential information,” including forbidding the disclosure of protected information or specifying the terms under which such

information may be disclosed. 37 C.F.R. § 42.54(a). The Board also observes a strong policy in favor of making all information filed in *inter partes* review proceedings open to the public. See *Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27, 3–4 (PTAB Jan. 19, 2018) (informative).

The default rule is that all papers filed in such proceedings are available to the public. Only “confidential information” is subject to protection against public disclosure. 35 U.S.C. § 326(a)(7); 37 C.F.R. § 42.55. In that regard, as noted in the Office’s Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (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.

* * *

Confidential Information: The rules identify confidential information in a manner consistent with the Federal Rules of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. § 42.54.

Petitioner, as the moving party, bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). And the standard for granting Petitioner’s requested relief is “good cause.” 37 C.F.R. § 42.54(a); *Argentum*, Paper 27 at 3–4. To demonstrate “good cause,” Petitioner must make a sufficient showing that:

(1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest

in maintaining confidentiality outweighs the strong public interest in having an open record.

Argentum, Paper 27 at 3–4; see also *Corning Optical Communications RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB Apr. 6, 2015) (requiring a showing that information has not been “excessively redacted”).

Petitioner addresses each aspect of the *Argentum* four-pronged test in its Motion. In doing so, Petitioner makes the following representations regarding the nature of the material sought to be protected:

Firstly, the materials contain non-public proprietary information the Petitioner maintains as confidential. Second Unified’s membership is confidential business information of the Petitioner that is not generally known to the public and the disclosure of which would cause harm to Petitioner. Third, Unified’s disclosure includes confidential, sensitive commercial information, including closely held information related to Unified’s core business. Unified guards such information closely to protect its members as well as its own business. Unified has not made, and does not intend to make, this information publicly available.

Mot. 3. In addition, Petitioner represents that it has a contractual obligation with third parties not involved in this proceeding to maintain the confidentiality of this information, and that “[w]ithout an assurance that this highly confidential business information will be protected, Unified’s members wishing to remain confidential may be adversely affected.” *Id.* at 3–4. According to Petitioner, disclosure of this information will not only harm Petitioner, but also a third party not involved in this proceeding, and the public interest will not be harmed by sealing the information. *Id.* at 4. “Accordingly, the Petitioner believes the interest in maintaining

confidentiality outweighs the public interest in having an open record and the documents should be sealed.” *Id.*

Petitioner’s showing is sufficient that good cause exists to seal Petitioner’s confidential information, and we agree that the redactions to Patent Owner’s Preliminary Response and Exhibits 2002 and 2004 are reasonably limited to protect such confidential information. We observe, however, that Patent Owner’s Opposition to Petitioner’s Motion to Dismiss and Terminate, filed as Paper 13 in the proceeding, was filed with restricted access and without a nonconfidential public version. We accordingly order Petitioner to file, by November 30, 2020, such a nonconfidential public version as a paper in the proceeding, redacted only so far as to protect the confidential information.

We also observe that Exhibit 2003 was filed in the proceeding with limited access. Petitioner’s Motion does not request that this exhibit remain sealed, and the document is evidently a printout from a publicly available web site. We accordingly order that the availability restrictions for this exhibit be removed in the Board’s system.

It is

ORDERED that Petitioner’s Motion to Seal and for Entry of Protective Order is *granted*;

FURTHER ORDERED that the agreed proposed Protective Order (Paper 9, App. A) is entered;

FURTHER ORDERED that Paper 8 and Exhibits 2002 and 2004 shall remain sealed;

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FURTHER ORDERED that Exhibit 2003 be unsealed; and

FURTHER ORDERED that Petitioner shall file, as a paper in this proceeding, a nonconfidential public version of Paper 13 by November 30, 2020.

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