

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

ONE WORLD TECHNOLOGIES, INC.,  
D/B/A TECHTRONIC INDUSTRIES POWER EQUIPMENT,  
Petitioner,

v.

CHERVON (HK) LIMITED,  
Patent Owner.

Case IPR2020-00886  
U.S. Patent 9,826,686

**PETITIONER'S MOTION TO SEAL  
CONFIDENTIAL PORTIONS OF EXHIBIT 1039**

## **I. Background and Introduction.**

By previous agreement of the parties, Patent Owner filed a Motion to Seal<sup>1</sup> the confidential deposition transcript of Petitioner's Group President, Mr. Lee Sowell, concurrently with its Patent Owner Response. *See* (sealed) Exhibit 2029; 37 C.F.R. § 42.53(f)(7) (permitting either party to file a transcript as an exhibit); 37 C.F.R. § 42.14 (authorizing motions to seal). The Motion expressed the parties' "agreement as to ... the confidentiality of the above-described deposition testimony" and their agreement to adopt the PTAB's Default Protective Order to protect Mr. Sowell's confidential testimony. *See* Motion to Seal, at 2-3; *see* PTAB Consolidated Trial Practice Guide (November 2019), Appendix B ("P.O. Guideline"). Thus, Mr. Sowell's deposition transcript is currently "Protective Order Material" and under seal as Exhibit 2029, and subject to the PTAB's default protective order.<sup>2</sup>

---

<sup>1</sup> Patent Owner filed similar Motions to Seal in IPR2020-00884 (Paper No. 26), IPR2020-00886 (Paper No. 27), IPR2020-00887 (Paper No. 26) and IPR2020-00888 (Paper No. 26). The present motion is being filed in each proceeding.

<sup>2</sup> The Board has not yet entered the requested protective order but "[t]he terms of a protective order take effect upon the filing of a Motion to Seal by a party, and remain in place until lifted or modified by the Board." P.O. Guideline, part (b).

By the present Motion to Seal<sup>3</sup>, Petitioner, as the producing party of Mr. Sowell’s testimony, respectfully moves to seal only those portions of his transcript that contain confidential information directed to non-public corporate structure and business operations constituting “confidential research, development, or commercial information” consistent with Federal Rule of Civil Procedure 26(c)(1)(G) and 37 C.F.R. 42.54. This Motion is being filed with Exhibit 1039, a public, redacted version of Exhibit 2029. Good cause exists to maintain the confidential portions of Mr. Sowell’s testimony under seal because none of the confidential testimony relates to patent validity or affects the otherwise complete and understandable file history of this proceeding. The public interest in making the confidential testimony public is minimal, if any. *See Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, slip op. at 9, 10 (PTAB Apr. 5, 2013) (Paper 36) (finding that the public’s interest in having access to a party’s confidential business information, not related to patent validity, is “minimal”).

---

<sup>3</sup> The timing of this motion complies with the Board’s Order dated February 11, 2021, entered in IPR2020-00884 (Paper No. 27), IPR2020-00886 (Paper No. 28), IPR2020-00887 (Paper No. 27) and IPR2020-00888 (Paper No. 27), which set the date for Petitioner to file a public version of Exhibit 2029 in each proceeding.

## **II. Certification of Conference with Counsel for Patent Owner Pursuant to 37 CFR 42.54.**

The undersigned has conferred in good faith with counsel for Patent Owner and has not reached an agreement as to the confidentiality of Mr. Sowell's testimony. Petitioner expects this motion will be opposed.

Petitioner originally identified to Patent Owner the below-listed confidential excerpts in Mr. Sowell's testimony on January 30, 2021 (within 10 days of receiving the transcript on January 21) and again on February 16, 2021, in advance of this Motion. *See* P.O. Guideline, part (d)(6).

## **III. Certification of Non-Publication.**

Petitioner certifies that it has taken appropriate steps to maintain the confidentiality of Mr. Sowell's testimony including those leading to, and summarized in, this Board's Order of February 11, 2021. *See supra*, note 3.

## **IV. Entry of the PTAB's Default Protective Order is Requested.**

Petitioner and Patent Owner previously agreed to adopt, and requested entry of, the PTAB's Default Protective Order set forth in the Board's Trial Practice Guide. *See* Section I., *supra*; Patent Owner's Motion to Seal, at 2-3. Petitioner's preference is for the format of the Default Protective Order appended to this motion, where its heading identifies the four ongoing IPR proceedings to ensure that persons signing the Acknowledgement are aware of each.

**V. Good Cause Exists to Seal Portions of Exhibit 1039/2029.**

In determining whether to grant a Motion to Seal, the Board must find “good cause” and will “balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” 37 C.F.R. § 42.54(a); 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). Petitioner’s interests in protecting its confidential business information and the confidential business information of third parties outweigh the public’s interest in viewing that information. *See Garmin v. Cuozzo*, Paper 36 at 9 (finding that the public’s interest in having access to a party’s confidential business information, not related to patent validity, is “minimal”).

Petitioner is seeking to seal only those portions of Exhibit 1039/2029 that reveal confidential information. Accordingly, Petitioner is submitting a redacted, public version of Exhibit 2029 rather than sealing the entire document. *See Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756-01, 48761 (Aug. 14, 2012) (parties are encouraged “to redact sensitive information, where possible, rather than seeking to seal entire documents”); PTAB Consolidated Trial Practice Guide (November 2019), 22 (same). The unredacted transcript remains available to the Board as (sealed) Exhibit 2029 submitted with Patent Owner’s Motion to Seal. There is good cause to seal the confidential information designated below.

**A. Confidential Testimony Qualifying Under FRE 408.**

Certain testimony elicited during Mr. Sowell’s deposition relates to settlement-type communications exchanged with Patent Owner after the filing of Patent Owner’s parallel patent infringement suit against Petitioner, and after the filing of the IPR petition in the present proceeding. Such communications qualify for protection under Federal Rules of Evidence 408 and should remain sealed.

“[C]onduct or a statement made during compromise negotiations about [a] claim” is “not admissible – on behalf of any party – either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction.” Federal Rules of Evidence 408(a). The following excerpts in Mr. Sowell’s testimony fall under FRE 408 and are neither related to patent validity nor affect the otherwise complete and understandable file history of this proceeding. The public’s interest in accessing such testimony is minimal, if any.

*Ex. 1039/2029 (Sowell Tr.), 72:20–73:21; 74:18-75:19.*

**B. Confidential Testimony on Internal Corporate Operations.**

The following excerpts in Mr. Sowell’s testimony disclose confidential internal operations such as the tasks or business affairs that certain companies, within the corporate network of which Petitioner is a part, may perform for other companies within that corporate network. The testimony also provides

confidential details on internal communications by and among personnel within the corporate network. The testimony is unrelated to patent validity and does not affect the otherwise complete and understandable file history of this proceeding. The public's interest in accessing such testimony is minimal, if any.

*Ex. 1039/2029 (Sowell Tr.), 63:08–63:16; 65:13–71:19; 72:03–72:10; 75:20–78:11; 78:21–79:13; 80:17–81:17.*

**C. Confidential Testimony on Non-Public Internal Corporate Financials.**

The following excerpts in Mr. Sowell's testimony disclose financials – such as proportions of revenue from specific sources – that are not published by the corporate network of which Petitioner is a part. The testimony is unrelated to patent validity and does not affect the otherwise complete and understandable file history of this proceeding. The public's interest in accessing such testimony is minimal, if any.

*Ex. 1039/2029 (Sowell Tr.), 64:21–65:09.*

**D. Confidential Testimony on Third Party Contracts and Relationships.**

The following excerpts in Mr. Sowell's testimony relate to confidential contracts and analogous business relationships among third parties and the entities within the corporate network of which Petitioner is a part. The testimony is unrelated to patent validity and does not affect the otherwise complete and

understandable file history of this proceeding. The public's interest in accessing such testimony is minimal, if any.

*Ex. 1039/2029 (Sowell Tr.), 39:11–39:16; 42:21–43:15; 52:20–53:08; 54:05–54:14; 56:15–56:15; 56:18–56:18; 58:05–58:07; 58:20–58:21.*

#### **E. Confidential Testimony on Internal Personnel and Reporting Duties.**

The following excerpts in Mr. Sowell's testimony relate to internal personnel and reporting duties, such as the identity of officer(s) to whom other officer(s) may report as part of their corporate responsibilities. The testimony reveals confidential internal business and reporting structures of Petitioner. The testimony is unrelated to patent validity and does not affect the otherwise complete and understandable file history of this proceeding. The public's interest in accessing such testimony is minimal, if any.

*Ex. 1039/2029 (Sowell Tr.), 11:18–13:08; 13:17–14:08; 14:17–16:06; 17:06–18:22; 19:08–19:11; 20:16–20:22; 21:11–23:17.*

### **VI. Conclusion**

In view of the foregoing and the scope of protection sought, there is good cause to grant this motion to seal the designated confidential portions of the transcript. 37 C.F.R. § 42.54. Petitioner respectfully requests that the Board grant this motion to seal and enter the agreed-upon protective order.



Respectfully submitted,

Dated: February 18, 2021

/s/ Edward H. Sikorski  
Edward H. Sikorski  
Reg. No. 39,478  
*Attorney for Petitioner*

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

ONE WORLD TECHNOLOGIES, INC.,  
D/B/A TECHTRONIC INDUSTRIES POWER EQUIPMENT,  
Petitioner,

v.

CHERVON (HK) LIMITED,  
Patent Owner.

Case IPR2020-00884  
U.S. Patent No. 9,596,806

Case IPR2020-00886  
U.S. Patent 9,826,686

Case IPR2020-00887  
U.S. Patent 9,986,686

Case IPR2020-00888  
U.S. Patent 10,070,588

**DEFAULT 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) 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.

(F) The Office. Employees and representatives of the United States Patent and Trademark 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.

3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified in (2)(A)-(E), 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 and after signing the Acknowledgement. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

4. 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.

5. 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 along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is

under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does 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. A party may challenge the confidentiality of the information by opposing the Motion to Seal. 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 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. Documents (including deposition transcripts) and other information designated as confidential that are 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.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD

ONE WORLD TECHNOLOGIES, INC.,  
D/B/A TECHTRONIC INDUSTRIES POWER EQUIPMENT, Petitioner,  
v.  
CHERVON (HK) LIMITED, Patent Owner.

Case IPR2020-00884 - U.S. Patent 9,596,806  
Case IPR2020-00886 - U.S. Patent 9,826,686  
Case IPR2020-00887 - U.S. Patent 9,986,686  
Case IPR2020-00888 - U.S. Patent 10,070,588

**STANDARD ACKNOWLEDGEMENT  
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 Agreed Protective Order and providing remedies for its breach.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_



## CERTIFICATE OF SERVICE

The undersigned certifies service pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(b) on the Patent Owner by electronic copy of this:

### PETITIONER'S MOTION TO SEAL CONFIDENTIAL PORTIONS OF EXHIBIT 1039

Service is made electronically upon agreement of the parties.

James J. Lukas, Jr. Gary Jarosik Keith Jarosik Matthew J. Levinstein Benjamin P. Gilford Callie J. Sand Erik M. Bokar Greenberg Traurig, LLP 77 West Wacker Drive, Ste. 3100 Chicago, IL 60601	<a href="mailto:LukasJ@gtlaw.com">LukasJ@gtlaw.com</a> <a href="mailto:JarosikG@gtlaw.com">JarosikG@gtlaw.com</a> <a href="mailto:JarosikK@gtlaw.com">JarosikK@gtlaw.com</a> <a href="mailto:LevinsteinM@gtlaw.com">LevinsteinM@gtlaw.com</a> <a href="mailto:GilfordB@gtlaw.com">GilfordB@gtlaw.com</a> <a href="mailto:SandC@gtlaw.com">SandC@gtlaw.com</a> <a href="mailto:BokarE@gtlaw.com">BokarE@gtlaw.com</a>
---	--

Dated: February 18, 2021

/s/ Edward H. Sikorski

Edward H. Sikorski

Reg. No. 39,478

Attorney for Petitioner