

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECORE FITNESS, INC. d/b/a ASSAULT FITNESS,
Petitioner,

v.

WOODWAY USA, INC.,
Patent Owner.

IPR2023-00836 (Patent 9,039,580 B1)
IPR2023-00843 (Patent 10,561,884 B2)
IPR2023-00849 (Patent 10,799,745 B2)¹

Before MEREDITH C. PETRAVICK, NEIL T. POWELL, AND
AMEE A. SHAH, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Motion to Seal and
Granting Petitioner's Motion to Seal and
Entering Modified Protective Order
37 C.F.R. §§ 42.14, 42.54

¹ This Order addresses issues that are the same in each of these proceedings. We issue one Order to be entered in each proceeding. The parties are not authorized to use this style caption unless later permitted.

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I. INTRODUCTION

Patent Owner's Motion to Seal and Proposed Protective Order

Patent Owner filed a Motion to Seal (Paper 19², “Patent Owner’s Motion”) in each of the above identified proceedings, in which Patent Owner moves to seal portions of Patent Owner’s Response and Exhibits 2020, 2032, 2033, 2034, and 2038. The record in each proceeding currently includes redacted “Public” versions of Patent Owner’s Response and Exhibit 2020, as well as unredacted “Parties and Board Only” versions of Patent Owner’s Response and Exhibits 2020, 2032, 2033, 2034, and 2038. Each Patent Owner’s Motion includes a proposed Protective Order (Ex. 2073, “Proposed Protective Order”), which is a modified version of the Board’s Default Protective Order. Patent Owner’s Motion 6 (citing Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) (“Trial Practice Guide”)³). The Proposed Protective Order protects sealed documents as “Protective Order Material” and as “Protective Order Financial Material.” Ex. 2073, 1. Patent Owner represents that Petitioner “has agreed to entry of the Proposed Protective Order and has not expressed an intent to oppose this motion to seal.” Patent Owner’s Motion 6. The period for opposing Patent Owner’s Motion to Seal has expired. *See* 37 42.25(a)(1) (setting a default one-month time period).

² For expediency, we cite to Patent Owner’s Motion in IPR2023-00836. A similar Patent Owner’s Motion was filed in IPR2023-00843 and in IPR2023-00849.

³ Available at <http://www.uspto.gov/TrialPracticeGuideConsolidated>.

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For the reasons discussed below in section II, we *grant* Patent Owner’s Motion to Seal and *enter* Patent Owner’s Proposed Protective Order.

Petitioner’s Motion to Seal

Petitioner filed a Motion to Seal (Paper 24⁴, “Petitioner’s Motion”) in each of the above identified proceedings, in which Petitioner moves to seal portions of Petitioner’s Reply and Exhibits 1037, 1045, and 1047. The record in each proceeding currently includes redacted “Public” versions of Petitioner’s Reply, as well as unredacted “Parties and Board Only” versions of Petitioner’s Reply and Exhibits 1037, 1045, and 1047. In each of Petitioner’s Motion, Petitioner consents to Patent Owner’s Proposed Protective Order, which is a modified version of the Board’s Default Protective Order. Petitioner’s Motion 4 (citing Trial Practice Guide); Ex. 2073). Petitioner has “agreed to entry of the Proposed Protective Order submitted as Exhibit 2073” and represents that Patent Owner does not oppose [Petitioner’s] motion to seal.” *Id.*

For the reasons discussed below in section II, we *grant* Petitioner’s Motion to Seal.

II. DISCUSSION

The record of an *inter partes* review shall be made available to the public, except as otherwise ordered, and any documents filed with a motion to seal

⁴ For expediency, we cite to Petitioner’s Motion in IPR2023-00836. A similar Petitioner’s Motion was filed in IPR2023-00843 and in IPR2023-00849.

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shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. Only “confidential information” may be protected against public disclosure. 35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54. The Board observes a strong public policy in favor of making information filed in its proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). For a sufficient showing for a motion to seal, the Board has required 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 Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB April 6, 2015) (requiring a showing that information has not been “excessively redacted”).

Patent Owner’s Motion to Seal

Patent Owner explains that the testimony of Eric A. Weber (Ex. 2020), Patent Owner’s Director of Sales and Marketing, contains “confidential, sensitive, and proprietary business and financial information, including information relating to Patent Owner’s sales, profits, costing, and

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customers,” and “confidential commercial, sales, and customer information that Patent Owner maintains as trade secrets.” Patent Owner’s Motion 4.

Regarding Exhibits 2032, 2033, 2034, and 2038, Patent Owner identifies portions containing “confidential, sensitive, and proprietary business and financial information, including information relating to Patent Owner’s sales, profits, and customers for certain of Patent Owner’s treadmill products.” *Id.* at 3. Patent Owner asserts “that the entirety of these documents comprise confidential information, and as such, redacted public versions have not been submitted.” *Id.*

Regarding the Patent Owner’s Response, Patent Owner identifies portions containing “confidential commercial, sales, and customer information that Patent Owner maintains as trade secrets” that “reference and incorporate[] confidential information from Exhibits 2020, 2032, 2033, 2034, and 2038.” *Id.* at 5.

Upon review of Patent Owner’s Response and Exhibits 2020, 2032, 2033, 2034, and 2038, we are persuaded that good cause exists to seal these exhibits and portions of Patent Owner’s Response. *See* Patent Owner’s Motion 2–6. In particular, Patent Owner has narrowly tailored the identified portions of Patent Owner’s Response and each exhibit to seal so as to protect sensitive or otherwise confidential information while balancing the public interest in disclosure of the testimony in Patent Owner’s Response and the exhibits. *See id.*

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Petitioner's Motion to Seal

Petitioner explains that Exhibits 1037, 1045, and 1047 “describe confidential, sensitive, and/or proprietary business and financial information.” Petitioner’s Motion 2. Petitioner asserts “that the entirety of these documents comprise confidential information, and as such, redacted public versions have not been submitted.” *Id.*

Regarding the Petitioner’s Reply, Petitioner identifies portions containing “confidential commercial, sales, and/or customer information” that “incorporate[] confidential information from Exhibits 1037, 1045, and 1047.” *Id.* at 2–3.

Upon review of Petitioner’s Reply and Exhibits 1037, 1045, and 1047, we are persuaded that good cause exists to seal these exhibits and portions of Petitioner’s Reply. *See* Petitioner’s Motion 2–4. In particular, Petitioner has narrowly tailored the identified portions of Petitioner’s Reply and each exhibit to seal so as to protect sensitive or otherwise confidential information while balancing the public interest in disclosure of the testimony in Petitioner’s Reply and the exhibits. *See id.*

III. MODIFIED PROTECTIVE ORDER

The Board may, for good cause, issue a protective order “to protect a party or person from disclosing confidential information.” 37 C.F.R. § 42.54(a). A protective order is not entered by default but must be proposed by one or more parties and must be approved and entered by the Board. Trial Practice Guide 19–20, 107. The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a Default

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Protective Order. *See id.* 19–20, 107–122. The parties may propose modifications to the Default Protective Order and the Board will generally accept such proposed changes if they are consistent with the integrity and efficient administration of the proceedings. *Id.* at 115.

Patent Owner’s Proposed Protective Order includes the “Protective Order Material” designation for confidential information in the Board’s Default Protective Order (*see* Trial Practice Guide 117–122), and adds the “Protective Order Financial Material” designation that covers “[c]onfidential information that includes financial data.” Ex. 2073, 1; *see also* Ex. 2074 (redline copy of the Protective Order showing modifications to the Default Protective Order).

After reviewing the proposed modifications to the Default Protective Order in Patent Owner’s Proposed Protective Order, particularly, the addition of the “Protective Order Financial Material” marker, and the addition of details regarding “Outside Counsel” and “Experts,” we determine that the changes are consistent with the integrity and efficient administration of the proceedings. Specifically, Patent Owner indicates the need for protection from information being “improperly used by competitors to gain unfair business and competitive advantage with customers in the marketplace.” Patent Owner’s Motion 3–4. Petitioner “consented to Patent Owner’s Proposed Protective Order.” Petitioner’s Motion 4. Accordingly, we enter Patent Owner’s Proposed Protective Order.

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IV. ORDER

Accordingly, it is

ORDERED that Patent Owner's Motions to Seal are *granted* with respect to Patent Owner's Response and Exhibits 2020, 2032, 2033, 2034, and 2038 in each of the above identified proceedings;

ORDERED that Petitioner's Motions to Seal are *granted* with respect to Petitioner's Reply and Exhibits 1037, 1045, and 1047 in each of the above identified proceedings; and

FURTHER ORDERED that the Proposed Protective Order (Ex. 2073) is *entered* in each of the above identified proceedings.

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