

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MAHLE BEHR CHARLESTON INC.,  
Petitioner,

v.

FRANK AMIDIO CATALANO,  
Patent Owner.

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IPR2023-00861  
Patent RE47,494 E

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Before GRACE KARAFFA OBERMANN, JON B. TORNQUIST, and  
CHRISTOPHER M. KAISER, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

ORDER  
Granting Petitioner's Motion to Seal  
and Entering Protective Order  
*37 C.F.R. §§ 42.14, 42.54(a)*

Along with its Petition, Petitioner filed a Motion to Seal. *See* Paper 6.<sup>1</sup> The motion seeks entry of a protective order and sealing of the confidential versions of Exhibits 1018–1020. Patent Owner has indicated that it does not oppose the motion. Ex. 3002. As discussed below, we grant Petitioner’s motion.

First, as to Petitioner’s request for entry of a protective order, Petitioner proposes a modification of the Board’s default protective order, as shown in a redline version Petitioner has prepared. Ex. 1023. In Petitioner’s proposed version, there are two categories of protected information, including, in addition to the ordinary confidential information covered by the default protective order, a category of “[c]onfidential information of such a highly sensitive nature that revelation of the same to an adverse party will likely cause a current competitive harm.” *Id.* at 2–3. For this type of information, the proposed protective order eliminates “Parties” and “In-house Counsel” as categories of persons permitted to access confidential information under paragraph 2. *Id.* at 1–2. With respect to Exhibits 1018–1020, Petitioner argues that this change is warranted because the disclosure of the material therein would result in concrete harm and because the parties to a related proceeding have undertaken “[e]fforts to maintain the confidentiality of this information.” Paper 6, 3; *see* Paper 6, 1–3 (explaining the nature of the exhibits Petitioner seeks to seal). Because Patent Owner does not oppose Petitioner’s motion, we grant the request to enter the

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<sup>1</sup> The Motion to Seal originally was filed as Exhibit 1024. We ordered Petitioner to refile the motion as a paper rather than an exhibit. Ex. 3001. Now that Petitioner has done so, we expunge Exhibit 1024.

proposed protective order. The terms of the protective order contained in Exhibit 1022 shall govern this proceeding.

As to Petitioner's request to seal the confidential versions of Exhibits 1018–1020, the materials at issue include communications between Petitioner and a third party regarding litigation involving that third party, as well as “purchase order terms and conditions” of that third party. *Id.* at 2–3. Petitioner argues that this information is commercially sensitive, and Petitioner “certifies that . . . the information sought to be sealed by this Motion to Seal has not been published or otherwise made public.” *Id.* at 3. Petitioner has not filed redacted versions of these exhibits, arguing instead that “the entirety of [each exhibit] comprises confidential information.” *Id.* at 2–3. After reviewing the Motion and the exhibits Petitioner seeks to seal, we determine that good cause exists for granting Petitioner's motion to seal.

So far, Patent Owner's counsel has not had access to Exhibits 1018–1020, because Petitioner filed those exhibits as accessible only by Petitioner and the Board. To expedite Patent Owner's counsel's access to the information in these exhibits, Petitioner shall serve copies of the sealed exhibits on Patent Owner's counsel, and Patent Owner's counsel shall execute the acknowledgement that forms part of the protective order, both within one business day of the entry of this order.

We remind the parties that confidential information that is subject to a protective order ordinarily becomes public forty-five (45) days after final judgment in a trial. *See* Trial Practice Guide, 77 Fed. Reg. at 48,761. There is an expectation that information will be made public when the existence of the information is identified in a final written decision following a trial. *Id.*

After final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public in accordance with 37 C.F.R. § 42.56.

ORDER

In light of the foregoing, it is hereby:

ORDERED that Petitioner's Motion to Seal (Paper 6) is *granted*;

FURTHER ORDERED that the protective order set forth in Exhibit 1022 is entered in this proceeding, and the parties shall comply with its provisions in their entirety;

FURTHER ORDERED that Exhibits 1018–1020 shall remain sealed and designated as “Filing Party and Board Only” until further notice;

FURTHER ORDERED that, within one business day after entry of this order, Patent Owner's counsel shall execute the acknowledgement that forms part of the protective order; and

FURTHER ORDERED that, within one business day after entry of this order, Petitioner shall serve on Patent Owner's counsel copies of Exhibits 1018–1020.

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