

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NJOY, LLC,
NJOY HOLDINGS, INC.,
Petitioners,

v.

JUUL LABS, INC.,
Patent Owner

Case IPR2024-00223
Patent No. 10,709,173

PETITIONERS' MOTION TO SEAL

Under 37 CFR §§ 42.14 and 42.54, Petitioners NJOY, LLC, NJOY Holdings, Inc. (“Petitioners”) submit this Motion to Seal its Reply to Patent Owner’s Preliminary Response (“Reply”) and EX1032-EX1036 (“Confidential Exhibits”), which are being filed under seal concurrently with this Motion. Patent Owner has previously filed a proposed Protective Order (EX2101) which the parties have stipulated to. The Parties agree that the Reply and the Confidential Exhibits should be protected by the same proposed Protective Order.

I. GOOD CAUSE EXISTS FOR SEALING

The Office Patent Trial Practice Guide provides that “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.” 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). Those rules “identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.* (citing 37 C.F.R. §42.54).

Petitioners’ Reply cites, describes, and/or quotes EX1032 and EX1033, which are deposition transcripts from the parallel ITC investigation involving the Challenged Patent; EX1034-EX1036, which are documents produced by Patent Owner in the parallel ITC investigation; and EX2003, which Patent Owner has

moved to seal. *See* Paper 9. Petitioners cite these exhibits to address secondary consideration arguments in Patent Owner’s Preliminary Response.

The Confidential Exhibits contain Patent Owner’s confidential business information, were designated in the parallel ITC Investigation as “Confidential Business Information Subject to Protective Order,” are subject to the applicable Protective Order from the parallel ITC Investigation, and should be similarly protected here. These Exhibits contain highly confidential and non-public information concerning business, financial, and/or strategy information of Patent Owner’s. Petitioners understand that Patent Owner has not made, and does not intend to make, information in the Confidential Exhibits publicly available.

Thus, the Confidential Exhibits qualify for PROTECTIVE ORDER MATERIAL – ATTORNEYS’ EYES ONLY protection pursuant to the proposed stipulated Protective Order (EX2101). The portions of the Reply that describe or quote these exhibits likewise qualify for the same protection. Accordingly, Petitioners’ Reply to Patent Owner’s Preliminary Response and EX1032-EX1036 should be sealed under 37 C.F.R. § 42.54. Petitioner is filing a redacted version of its Reply to the public docket.

II. CERTIFICATION OF NON-PUBLICATION

To the best of Petitioners’ knowledge, the information sought to be sealed by this Motion has not been published or otherwise made publicly available.

III. PROTECTIVE ORDER

The parties have met and conferred and agreed to the proposed Protective Order filed by Patent Owner (EX2101) in this action to extend the same level of protection for the documents as was provided in the parallel ITC investigation.

IV. CERTIFICATION OF MEET AND CONFER

Pursuant to 37 CFR §42.54, Patent Owner has met and conferred with Petitioners' and the parties stipulated to the proposed Protective Order.

V. CONCLUSION

For the foregoing reasons, Petitioners' respectfully requests that the Board seal and protect the highly confidential information contained in Petitioners' Reply to Patent Owner's Preliminary Response and Exhibits 1032-1036.

Date: March 27, 2024

By: /Anish R. Desai/
Anish R. Desai
Lead Counsel for Petitioners
Registration No. 73,760

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 27, 2024, the foregoing
PETITIONERS' MOTION TO SEAL was served via electronic mail, upon the
following:

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