

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

PATENT OWNER'S MOTION TO SEAL

Under 37 CFR §§ 42.14 and 42.54, Patent Owner JUUL Labs, Inc. submits this Motion to Seal its Patent Owner Preliminary Response and certain exhibits, which are being filed under seal concurrently with this Motion. Concurrently herewith, Patent Owner is also filing a proposed Protective Order that the parties have stipulated to, both a redline over the default Protective Order (Exhibit 2100) and a clean version (Exhibit 2101).

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).

Patent Owner’s Preliminary Response and Exhibit 2001 cite, describe, and quote Exhibit 2003, which is a document produced by Patent Owner, and Exhibits 2025, 2026, and 2041, which are deposition transcripts of Patent Owner’s witnesses, from the parallel ITC investigation involving the Challenged Patent. These Exhibits contain Patent Owner’s confidential business information, were designated in that case as “Confidential Business Information Subject to Protective Order,” are subject to the

applicable Protective Order from the parallel litigation, 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. Patent Owner guards such information closely and has not made, and does not intend to make, this information publicly available.

Thus, Exhibits 2003, 2025, 2026, and 2041 qualify for PROTECTIVE ORDER MATERIAL – ATTORNEYS’ EYES ONLY protection pursuant to the proposed stipulated Protective Order filed concurrently herewith (Exhibit 2101). The portions of Patent Owner’s Preliminary Response and Exhibit 2001 that describe or quote these exhibits likewise qualify for the same protection. Accordingly, Patent Owner’s Preliminary Response and Exhibits 2001, 2003, 2025, 2026, and 2041 should be sealed under 37 C.F.R. § 42.54. Patent Owner is filing a redacted version of its Preliminary Response and Exhibit 2001 to the public docket.

II. CERTIFICATION OF NON-PUBLICATION

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

III. PROTECTIVE ORDER

Concurrently herewith, Patent Owner is filing a proposed stipulated Protective Order that contains revisions to the Board’s Default Protective Order from the Trial Practice Guide. Exhibit 2100 is a redline of those revisions and Exhibit 2101 is a clean version of the proposed stipulated Protective Order. The parties have met and

conferred and agree with these revisions, which are intended to be consistent with the parties' stipulated Protective Order from the parallel ITC investigation under which the protected information was originally produced. Thus, the parties respectfully request that the Board enter this proposed stipulated Protective Order in this proceeding to govern the treatment of documents and information submitted according to its provisions.

IV. CERTIFICATION OF MEET AND CONFER

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

V. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that the Board seal and protect the highly confidential information contained in Patent Owner's Preliminary Response and Exhibits 2001, 2003, 2025, 2026, and 2041.

Date: February 29, 2024

By: /James M. Glass/
James M. Glass (Reg. No. 46,729)
Lead Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on February 29, 2024, a complete and entire copy of the above document was provided by email to Petitioners by serving correspondence addresses of record as follows:

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Dated: February 29, 2024

/James M. Glass/
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