

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNDER ARMOUR, INC.
Petitioner,

v.

ADIDAS AG,
Patent Owner.

Case No. IPR2015-00698
U.S. Patent No. 8,092,345

**PETITIONER'S UNOPPOSED MOTION TO SEAL AND FOR ENTRY OF
A PROTECTIVE ORDER PURSUANT TO 37 C.F.R. § 42.54**

Petitioner Under Armour, Inc. (“Petitioner”) hereby moves for entry of the Protective Order appended below as Addendum A and further moves to seal Petitioner’s Reply to Patent Owner’s Response (“Reply”) and certain exhibits submitted with its Reply, as described herein. The Protective order appended below is identical to the Protective Order agreed to by both parties in IPR2015-00700. Patent Owner adidas AG (“Patent Owner”) does not oppose the motion to file under seal or the motion for entry of the Protective Order at Addendum A.

Petitioner submits its Reply concurrently with the filing of this motion. In support of its Reply, Petitioner submits certain documents designated as “PROTECTIVE ORDER MATERIAL” by Petitioner. Petitioner submits that its Reply and these confidential and competitively-sensitive supporting exhibits are properly sealed in order to protect Petitioner’s highly-confidential business information from disclosure to its competitors as well as the general public.

I. MOTION TO SEAL

Petitioner moves to seal its Reply submitted concurrently with this motion. Petitioner further moves to seal the following exhibits submitted in support of its Reply:

1. Exhibit UA-1011 (Declaration of Joseph A. Paradiso)
2. Exhibit UA-1014 (Declaration of Julie L. Davis)

Petitioner concurrently files redacted versions of its Reply and supporting exhibits UA-1011 and UA-1014. Petitioner has served Patent Owner with both confidential and redacted versions of the Reply and supporting exhibits.

The record of an *inter partes* review proceeding, including documents and things, is made available to the public, except as otherwise ordered. 37 C.F.R. § 2.14. But despite the default rule of public availability, the Board will seal confidential information for “good cause,” because it is necessary 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.” 37 C.F.R. § 42.54(a); 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). As laid out in the Office Trial Practice Guide, the Board treats confidential information “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.* at 48760. Petitioner respectfully submits that good cause exists to seal its Reply, and Exhibits UA-1011 and UA-1014.

Petitioner’s Reply and supporting exhibits include competitively-sensitive business information of Petitioner. Specifically, Petitioner’s Reply includes confidential business information regarding marketing, user data, Petitioner’s business strategy, and product and financial performance. Exhibit UA-1011

contains confidential technical information on the performance and operation of products. Exhibit UA-1014 contains confidential information of Petitioner's regarding financial performance, sales figures, marketing, user data, and business strategy, all of which are redacted in full and were relied upon by Petitioner's Expert Julie L. Davis in fashioning her declaration, which is redacted in part to protect Petitioner's confidential business information. These materials have been made available to the opposing party only under similar "CONFIDENTIAL BUSINESS INFORMATION – ATTORNEYS' EYES ONLY" conditions in the related district court litigation.

If this highly-confidential information were disclosed publicly or to Patent Owner's employees, that information would likely cause competitive business harm. In other *inter partes* review proceedings, the Board has held that confidential information such as what Petitioner has submitted here should remain under seal. *See, e.g., Greene's Energy Grp., LLC v. Oil States Energy Svcs., LLC*, IPR2014-00216, Paper 27, at 5 (PTAB Sept. 23, 2014) (holding that portions of exhibit that contained confidential financial information remain under seal where proposed redactions were reasonable and thrust of underlying argument or evidence was clearly discernable); *Baby Trend, Inc. v. Wonderland Nurserygoods Co., Ltd.*, IPR2015-00841, Paper 35, at 3 (PTAB November 17, 2015) (holding good cause existed to seal market related information that was not otherwise public

and did not inhibit the general public from understanding the underlying arguments and evidence being relied upon in the public versions of the filings). Here, Petitioner has redacted from its public filings only those portions of its Reply and supporting exhibits that reflect competitively sensitive information. Petitioner submits that the thrust of its underlying arguments and evidence are still clearly discernable from the redacted, public versions of its filings.

Petitioner respectfully requests that the Board grant this motion to seal. Petitioner has met and conferred with Patent Owner, who does not oppose.

II. MOTION FOR ENTRY OF A PROTECTIVE ORDER

Both parties have met-and-conferred and agreed upon entry of a Protective Order in this case. The agreed Protective Order is appended below as Addendum A, along with a redline copy showing changes from the Board's default protective order, appended as Addendum B. The agreed Protective Order is identical to the Protective Order agreed upon by both parties in IPR2015-00700. The agreed Protective Order deviates from the Board's default protective order in that it limits disclosure of PROTECTIVE ORDER MATERIAL to up to three in-house counsel for the parties.

With these minor revisions, Petitioner moves for entry of the attached Protective Order. Petitioner does not oppose.

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