

Petitioner's Unopposed Motion to Seal

IPR2015-00698

U.S. Patent No. 8,092,345

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 PURSUANT TO
37 C.F.R. § 42.54**

Petitioner Under Armour, Inc. moves to seal (1) Petitioner's Response to Patent Owner's Motion for Observation on Cross-Examination of Ms. Julie Davis ("Document 1"), (2) Petitioner's Response to Patent Owner's Motion for Observation on Cross-Examination of Dr. Joseph Paradiso ("Document 2"), and (3) portions of Petitioner's Opposition to Patent Owner's Motion to Exclude ("Document 3"), as described below, under the Protective Order already in place. The Protective Order was submitted by Petitioner and agreed upon by both parties in Petitioner's Unopposed Motion to Seal and For Entry of a Protective Order Pursuant to 37 C.F.R. § 42.54, filed by Petitioner on February 16, 2016. Petitioner has met and conferred with Patent Owner, who does not oppose this motion to file under seal.

Petitioner submits public and confidential versions of Documents 1, 2, and 3 concurrently with the filing of this motion. Specifically, Petitioner submits a confidential version of Document 1, which is designated "PROTECTIVE ORDER MATERIAL" by Petitioner, entirely under seal. Petitioner also submits confidential versions of Documents 2 and 3 under seal and redacted versions of Documents 2 and 3. Petitioner has served Patent Owner with a confidential version of Document 1 and both confidential and redacted versions of Documents 2 and 3.

Petitioner submits that Documents 1, 2, and 3 are properly sealed in order to protect Petitioner's highly-confidential business information from disclosure to their competitors as well as the general public. 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 Documents 1, 2, and 3.

Documents 1, 2, and 3 include competitively-sensitive business information of Petitioner. This highly-confidential business information includes non-public technical, financial, and marketing information concerning Petitioner. This highly-confidential business information further includes detailed information about Petitioner's business strategy.

Document 1 contains highly confidential information of Petitioner's regarding financial performance, sales figures, marketing, user data, and business strategy, all of which are designated PROTECTIVE ORDER MATERIAL.

Document 2 contains highly confidential information concerning Petitioner's non-public technical information and discusses highly confidential information from a sealed deposition transcript (Ex. 2040) regarding non-public technical information.

Document 3 contains highly confidential information of Petitioner's regarding financial performance, sales figures, marketing, user data, and business strategy, all of which are designated PROTECTIVE ORDER MATERIAL

If this highly-confidential information were disclosed publicly or to either party'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 Documents 2 and 3 that reflects competitively sensitive information.

For the foregoing reasons, Petitioner respectfully requests that the Board grant this unopposed motion to seal.

Dated: April 20, 2016

Respectfully submitted,

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