

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

J SQUARED, INC. d/b/a UNIVERSITY LOFT COMPANY,
Petitioner,

v.

SAUDER MANUFACTURING COMPANY,
Patent Owner.

Cases¹

IPR2015-00774 (Patent 8,585,136 B2)

IPR2015-00958 (Patent 8,585,136 B2)

Before LINDA E. HORNER, JOSIAH C. COCKS, and
JAMES A. WORTH, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

ORDER

Joint Motion to Seal and Expungement of Papers
37 C.F.R. §§ 42.7, 42.14, and 42.54

¹ This order addresses issues raised in both cases. We exercise our discretion to issue one order to be filed in each case. The parties, however, are not authorized to use this style heading in subsequent papers.

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I. INTRODUCTION

After receiving authorization to do so by order of November 12, 2015, Patent Owner Sauder Manufacturing Company (“Patent Owner”) and Petitioner J Squared, Inc. d/b/a University Loft Company (“Petitioner”) filed a joint motion to seal the following documents in proceedings IPR2015-00774 and IPR2015-00958:

(1) Declaration of Philip Bontrager (IPR2015-00774, Exhibit 2008, unredacted; IPR2015-00958, Exhibit 2072, unredacted) that “contains confidential financial information”; and

(2) Excerpts from deposition transcripts of Mr. Justin Davis and Mr. Adam L. Anderson from a corresponding patent infringement litigation pending in the United States District Court for the Southern District of Indiana, Civil Action No. 3:14-cv-00962-JL (IPR2015-00774 and IPR2015-00958, Exhibits 2042 and 2043, unredacted), and corresponding Deposition Exhibits 53, 60, 61, 55, 48, 54, 56, 3, 7, 8, 13, and 14 (respectively, IPR2015-00774 and IPR2015-00958, Exhibits 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, and 2069, unredacted), that “contain information Petitioner deems confidential commercial information, specifically customer names, vendor names and financial information.”

Joint Motion to Seal (IPR2015-00772, Paper 12; IPR2015-00958, Paper 12), filed November 21, 2015 (“Mot. to Seal”). Patent Owner filed a redacted, public version and an unredacted, “Parties and Board Only” version of each

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of the above-listed documents as exhibits to Patent Owner's Response. Patent Owner's Trial Response (IPR2015-00772, Paper 13; IPR2015-00958, Paper 13), filed November 21, 2015. The parties have agreed to treat the unredacted versions of these exhibits as "Protective Order Material" under the terms of the Board's default protective order, an unexecuted copy of which the parties attached to the Joint Motion to Seal. Mot. to Seal (Exhibit 4001).

At the Board's request, the parties filed a Revised Joint Motion to Seal on November 23, 2015, to include an executed copy of the proposed protective order and to renumber the proposed protective order using the 2000 series of exhibit numbers. Revised Joint Motion to Seal (IPR2015-00772, Paper 14, Exhibit 2070; IPR2015-00958, Paper 14, Exhibit 2073) ("Revised Mot. to Seal"). On the same day, in IPR2015-00958, Patent Owner filed Corrected unredacted (Parties and Board Only) versions of Exhibits 2042, 2043, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, and 2072 to add an exhibit tag to each exhibit.

There is a strong public policy for making all information filed in an *inter partes* review open to the public. As explained in 37 C.F.R. § 42.14, the record of a proceeding shall be made available to the public, except as otherwise ordered. The Board may, for good cause, issue an order to protect a party from disclosing confidential information. 37 C.F.R. § 42.54(a). Our 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. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012).

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In its Motion to Seal, the parties indicate that the documents that are the subject of this motion “each include confidential commercial business information regarding customer and vendor names, as well as Petitioner’s confidential financial information.” Revised Mot. to Seal 2. The parties further certify that “the information associated with [each counsel’s] client for which counsel wishes protection has not been published or otherwise made public” and that “[t]he parties have undertaken efforts to maintain the confidentiality of this information in the related District Court proceeding.” *Id.* at 2–3.

Upon reviewing the materials sought to be sealed, and the parties’ arguments regarding their confidential nature, we are persuaded that good cause exists to seal them. We also note that the redacted portions of the materials appear to be tailored narrowly to only confidential information. As the parties agreed to the Board’s Default Protective Order, and provided an executed copy of the same, the materials will be sealed pursuant to that order.

The motion to seal will be conditionally granted for the duration of this proceeding. If the final written decision substantively relies on any information in a sealed document, the document may be unsealed by an Order of the Board. If any sealed document contains no information substantively relied on in the final written decision, a party may file a motion to expunge confidential information from the record. *See* 37 C.F.R. § 42.56; Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012).

For the sake of maintaining an orderly record of these proceedings, the Board expunges the unexecuted copy of the proposed protective order

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entered by the parties in each proceeding as Exhibit 4001. Also, the Board expunges the copies of the unredacted (Parties and Board Only) versions of Exhibits 2042, 2043, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, and 2072, filed on November 21, 2015, which have now been corrected to add an exhibit tag to each exhibit.

II. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the parties' joint motion to seal in each proceeding (IPR2015-00774, Paper 14; IPR2015-00958, Paper 14) is *granted*;

FURTHER ORDERED that the Default Protective Order (IPR2015-00774, Exhibit 2070; IPR2015-00958, Exhibit 2073) is entered and shall govern the treatment and filing of confidential information in the instant proceedings;

FURTHER ORDERED that the unexecuted proposed protective order (IPR2015-00774, Exhibit 4001; IPR2015-00958, Exhibit 4001) is expunged from these proceedings; and

FURTHER ORDERED that the unredacted (Parties and Board Only) versions of Exhibits 2042, 2043, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, and 2072, filed on November 21, 2015, are expunged from IPR2015-00958.

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