

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GRACO CHILDREN'S PRODUCTS INC.,
Petitioner,

v.

KOLCRAFT ENTERPRISES, INC.,
Patent Owner.

Case IPR2016-00816 (Patent D604,970 S)
Case IPR2016-00826 (Patent D616,231 S)¹

Before KEN B. BARRETT, JOSIAH C. COCKS, and
JENNIFER S. BISK, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Motion to Seal and
Granting Patent Owner's Motion for Entry of the Default Protective Order
37 C.F.R. §§ 42.14, 42.54

¹ This Paper will be entered in each case. The parties are not authorized to use this caption style.

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Procedural Background

Petitioner Graco Children's Products Inc. filed a Motion to Seal (IPR2016-00816, Paper 22; IPR2016-00826, Paper 23) concurrently with its Reply Brief and certain exhibits, including transcripts of the depositions of the named-inventors. Petitioner represented that the motion was necessary because Patent Owner Kolcraft Enterprises, Inc. had designated the subject exhibits and the deposition transcripts, in their entirety, as being confidential protective order material. *Id.* at 1². Petitioner's Reply relies on the subject exhibits. According to Petitioner, "this motion is filed to avoid prejudicing either Graco's timely Reply or Kolcraft's ability to make a claim of confidentiality as to information it contends should be not be publicly disclosed." *Id.* at 2. Specifically, Petitioner sought the provisional sealing of Exhibits 1019, 1024, and 1025, and Petitioner's Reply. *Id.*

Later, Patent Owner filed a Motion to Seal. IPR2016-00816, Paper 25; IPR2016-00826, Paper 26. Patent Owner sought to seal a document characterized as an "unredacted version of Exhibit 2008." *Id.* at 2. The earlier filed Exhibit 2008 is titled "Rule 131 Declaration of Damon Oliver Casati Troutman and Edward B. Bretschger," and relates to the purported conception and reduction to practice of the patents at issue in these proceedings.

The motions to seal were discussed at the oral argument. *See* IPR2016-00816, Paper 28; IPR2016-00826, Paper 29 (Hearing Transcript), 56–60. We expressed concerns regarding the excessiveness of sealing, in

² Substantively similar papers and exhibits were filed in both the subject cases. Unless indicated otherwise, all citations are to IPR2016-00816.

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their entirety, the deposition transcripts and Petitioner's Reply. *Id.* at 58.

We asked the parties meet and confer to discuss further the matter, and to limit the material requested to be sealed. *Id.*

Subsequently, Patent Owner filed another Motion to Seal designating as containing confidential information certain portions of Petitioner's Reply, the "unredacted version of Exhibit 2008," and the deposition transcripts of inventors Edward Bretschger and Damon Troutman (Exhibits 1024 and 1025). IPR2016-00816, Paper 27; IPR2016-00826, Paper 28. Patent Owner seeks to keep confidential the specific dates pertaining to the work of the inventors on play yards with exposed bowed legs. *Id.* at 3.

Additionally, Patent Owner filed a Motion for Entry of the Default Protective Order (Exhibit 2010), and represents that Petitioner does not oppose the terms of the Default Protective Order. IPR2016-00816, Paper 26; IPR2016-00826, Paper 27.

Discussion

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. *See Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, Case IPR2012-00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; however, a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. It is only "confidential information" that is protected from disclosure. 35 U.S.C. § 316(a)(7); *see* Office Patent Trial Practice Guide,

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77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The party moving to seal bears the burden of proof in showing entitlement to the requested relief and must explain why the information sought to be sealed constitutes confidential information. *See* 37 C.F.R. § 42.20(c). As set forth in the Trial Practice Guide (77 Fed. Reg. at 48,761), there is an expectation that information will be made public if identified in the Final Written Decision.

Patent Owner has provided redacted public versions of Petitioner’s Reply (Exhibit 2012) and the deposition transcripts of inventors Edward Bretschger and Damon Troutman (Exhibits 2011 and 2013), and has provided the earlier-filed version of Exhibit 2008 (the inventors’ declaration) containing blank lines instead of dates. Patent Owner’s counsel certifies that Patent Owner has not previously publicly disclosed the information it seeks to seal. *See* Patent Owner’s Mot. to Seal (Paper 27), 3. Patent Owner’s counsel also certifies that the parties have conferred regarding Patent Owner’s motion to seal and that the parties were unable to reach agreement as to the scope of the proposed protective order. *Id.* at 3. Petitioner did not file a paper in opposition to the motion.

We have considered Patent Owner’s arguments to partially seal Petitioner’s Reply, the inventor deposition transcripts, and the inventors’ declaration. The information Patent Owner seeks to seal was not relied on in the Final Written Decision. As such, protecting the confidential information from public disclosure minimally impacts the public’s interest in maintaining a complete file history. We determine that Patent Owner has demonstrated “good cause” for sealing portions of Petitioner’s Reply, the inventors’ declaration, and the inventors’ deposition transcripts pursuant to

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the default protective order. *See* 37 C.F.R. § 42.54. Accordingly, we *grant* Patent Owner's Motions to Seal (IPR2016-00816, Paper 27; IPR2016-00826, Paper 28).

We remind the parties that confidential information that is subject to a protective order ordinarily would become public after final judgment in a trial. *See* 37 C.F.R. §§ 42.14; Office Patent Trial Practice Guide, 77 Fed. Reg. at 48761. The parties may move to expunge confidential information from the record after final judgment (and appeals, if any). 37 C.F.R. § 42.56.

Accordingly, it is

ORDERED that Patent Owner's Motions to Seal (IPR2016-00816, Paper 27; IPR2016-00826, Paper 28) are granted;

FURTHER ORDERED that Patent Owner's motions for entry of the Default Protective Order (IPR2016-00816, Paper 26; IPR2016-00826, Paper 27) are granted;

FURTHER ORDERED that the Default Protective Order submitted by Patent Owner (Exhibit 2010) is hereby entered;

FURTHER ORDERED that Petitioner's Motions to Seal (IPR2016-00816, Paper 22; IPR2016-00826, Paper 23) and Patent Owner's first Motions to Seal (IPR2016-00816, Paper 25; IPR2016-00826, Paper 26) are dismissed as moot.

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