

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAMPBELL SOUP COMPANY,
CAMPBELL SALES COMPANY, and
TRINITY MANUFACTURING, LLC,
Petitioner,

v.

GAMON PLUS, INC.,
Patent Owner.

Cases IPR2017-00087 (Patent 8,827,111 B2);
IPR2017-00091 (Patent D621,645 S);
IPR2017-00094 (Patent D612,646 S)¹

Before GRACE KARAFFA OBERMANN, BART A. GERSTENBLITH,
and ROBERT L. KINDER, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION
Granting In-Part Petitioner's Motion to Seal
37 C.F.R. §§ 42.14, 42.54

¹ We exercise our discretion to issue one Decision and Order in each of these proceedings. The parties may not use this caption style.

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I. DISCUSSION

Petitioner filed a motion to seal (“Motion”) portions of Patent Owner’s Sur-Reply and Exhibits 2031 and 2032. Paper 64.² Petitioner contends that Exhibits 2031 and 2032 are “internal Campbell presentations” that “contain confidential ‘research [and] development information’ pursuant to Fed. R. Civ. P. 26(c)(1)(G).”³ Motion 3. Petitioner asserts that “[a]lthough the internal Campbell presentations are from 2002, they represent still-valuable research regarding consumer insights and shopping preferences, as well as strategies for optimizing the consumer shopping experience in the soup aisle.” *Id.* In particular, Petitioner explains that the presentations “pertain[] to strategies for optimal assortment and grouping of different products in the soup aisle, optimal location and use of signage, research regarding the amount of time that consumers spend when shopping various grocery aisles (including but not limited to the soup aisle), and the like.” *Id.* at 3–4. Petitioner argues that its competitors would gain an unfair advantage if given access to the information. *Id.* at 4. Accordingly, Petitioner proposed redactions to Exhibits 2031 and 2032 as well as Patent Owner’s Sur-Reply that Petitioner contends “do not materially detract from any material understanding of the public record.” *Id.*

Patent Owner filed a Partial Opposition (Paper 65) to Petitioner’s Motion in which Patent Owner only opposes Petitioner’s proposed

² Citations are to IPR2017-00087 unless otherwise indicated.

³ Federal Rule of Civil Procedure 26(c)(1)(G) permits a court to protect a party (via a protective order) from disclosing “a trade secret or other confidential research, development, or commercial information.”

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redactions to Exhibit 2032. Paper 65, 1.⁴ Patent Owner does not oppose Petitioner’s proposed redactions to Patent Owner’s Sur-Reply and Exhibit 2031. *Id.* With respect to Exhibit 2032, however, Patent Owner contends that Petitioner seeks improperly to redact all written material in the document. *Id.* Patent Owner argues that much of the information in Exhibit 2032 “deals with Patent Owner’s display racks and advantages of those racks that were known or attributed to Patent Owner or otherwise not truly confidential.” *Id.* Patent Owner further explains that “the information is very relevant to the determination of commercial success of the claimed invention and should be integral to the Board’s decision in this IPR, which militates against it being placed under seal.” *Id.* at 1–2 (citation omitted).

In particular, Patent Owner contends that the following information in Exhibit 2032 should not be sealed: figures regarding increases in Petitioner’s sales, locations of stores shown in several pictures, comments of shoppers, observations regarding Patent Owner’s products, and product specifications of Patent Owner’s products, including product size and capacity. *Id.* at 2–4. Patent Owner filed a copy of Exhibit 2032, which includes the redactions to which Patent Owner does not object—pages 2, 3, 12, and a portion of page 11. *Id.* at 4; Paper 74.

“The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered.” 37 C.F.R. § 42.14; *see* 35 U.S.C. § 316(a)(1). The standard for granting a motion to seal is good cause. *See* 37 C.F.R. § 42.54(a). There is a strong public policy that favors making information filed in *inter partes* review proceedings open

⁴ Patent Owner’s Opposition erroneously refers to “Exhibit 2031” in the first sentence of the third paragraph.

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to the public. *See Garmin Int'l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c).

Exhibits 2031 and 2032

We have reviewed the information presented in Exhibits 2031 and 2032. We agree with the parties that the information in Exhibit 2031 reflects internal Campbell presentations regarding consumer research. Additionally, the parties do not rely heavily upon the information presented in Exhibit 2031 and the confidentiality of the information therein is not readily contested as it relates to the issues presented in these cases. Accordingly, we grant Petitioner's Motion with respect to Exhibit 2031.

Exhibit 2032, however, presents a mixture of information reflecting internal Campbell presentations regarding consumer research as well as sales figures, shopper comments, locations and images of store shelves, and product specifications pertaining to Patent Owner's commercial products. We address each type of information presented in Exhibit 2032 because the outcome of our decision is dependent upon each.

With respect to the material that appears to reflect Campbell's consumer research and internal presentations, we agree with the parties that such information may remain under seal. That information is presented on pages 2, 3, 12, and a portion of page 11. Additionally, that information is not critical to an understanding of the issues presented in these cases nor relied upon heavily by the parties.

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We reach a different outcome with respect to the information presented on pages 4–11 of Exhibit 2032. First, the sales figures reflected on page 4, for the most part, are in the same 9 to 14% range that is disclosed in Mr. Johnson’s Declaration (*see* Ex. 2001 ¶ 10 (testifying that “use of the display racks resulted in an increase in sales of condensed Campbell Soup cans in a range of about 9% to 14%”)) and Mr. Johnson’s deposition testimony (*see* Ex. 1066, 6–12 (“And Cannondale said that the sales went up between . . . 9.3 to 14.9.”) neither of which were filed under seal. Additionally, this information was not redacted by Petitioner in its proposed public version of Patent Owner’s Sur-Reply.⁵ Further, this information is consistent with Campbell’s statements in its 2005-2007 Annual Reports. *See* Ex. 2024, 31 (“Condensed soup sales also benefited from gravity-feed shelving systems installed in retail stores.”); Ex. 2025, 39 (same); Ex. 2026, 36 (“Condensed soup also benefited from the additional installation of gravity-feed shelving systems . . .”). This information also is relevant to Patent Owner’s arguments regarding secondary indicia of non-obviousness. Accordingly, Petitioner has not established good cause to show that the sales figures presented on page 4 should be sealed.

Second, pages 4 through 10 include single-sentence quotations from consumers describing their reactions to Campbell’s use of Patent Owner’s display racks in several stores located throughout the United States and the locations of those stores. Ex. 2032, 4–10. Petitioner seeks to redact the

⁵ This document was submitted to the Board via email and is not in the file at present. Petitioner did not redact the statement that Patent Owner’s display racks resulted in “an increase in sales volume of 9.3% for Campbell’s condensed soup.”

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