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Paper No. 11
Entered: May 5, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDTRONIC XOMED, INC.,
Petitioner,

v.

NEUROVISION MEDICAL PRODUCTS, INC.,
Patent Owner.

Case IPR2017-00456
Patent 8,634,894 B2

Before MEREDITH C. PETRAVICK, MITCHELL G. WEATHERLY, and MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

ORDER
Motion to Seal and Motion for Protective Order
37 C.F.R. § 42.54

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner, Neurovision Medical Products, Inc., filed a Motion to Seal ("Motion" or "Motion to Seal") requesting sealing of Exhibit 2001 and for entry of the Board's default protective order. Paper 8, 3. Filed as part of its Motion, Patent Owner included a copy of this protective order as "Exhibit A." *Id.* (Ex. A).

Patent Owner represents that Petitioner does not oppose the Motion to Seal. *Id.* at 4.

As a preliminary matter, pursuant to 37 C.F.R. § 42.6(a)(3), combined documents are not permitted. Patent Owner's proposed protective order, "Exhibit A," is filed improperly as a combined document with Paper 8. Exhibit A should instead be filed as a separate numbered exhibit. Nevertheless, we will not require Patent Owner to refile Exhibit A as a separate exhibit. All future filings, however, must comply with the requirements of § 42.6.

Regarding Patent Owner's Motion to Seal, there is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because these proceedings determine the patentability of claims in issued patents and, therefore, affect the rights of the public. Under 35 U.S.C. § 326(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; a party, however, may file a concurrent motion to seal, and the information at issue is sealed pending the outcome of the motion. It is, however, only "confidential information" that is protected from disclosure. 35 U.S.C. § 316(a)(7); *see Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

The standard for granting a motion to seal is "for good cause." 37 C.F.R. § 42.54. The party moving to seal bears the burden of proof of showing entitlement to the requested relief, and establishing that information sought to be sealed is confidential information. 37 C.F.R. § 42.20(c).

In its Motion, Patent Owner seeks to seal information regarding "confidential aspects of Neurovision's manufacturing operation and products" and "Neurovision's confidential, internal business operation." Paper 8, 1. Patent Owner represents that disclosure of this information "would allow the public and competitors to learn Neurovision's supply chain details and business relationships" and that Patent Owner "may owe a duty of confidentiality to its suppliers and business associates." *Id.* at 2–3. Along with its Motion, Patent Owner files a redacted version of Exhibit 2001, as Exhibit 2017. Patent Owner certifies that it has conferred with Petitioner and that Petitioner does not oppose the Motion. *Id.* at 4.

Upon reviewing Exhibit 2001 and its redacted version, Exhibit 2017, we agree that Exhibit 2001 appears, on its face, to contain confidential business information. We, therefore, are persuaded that Patent Owner shows good cause for sealing Exhibit 2001 in its entirety.

Accordingly, we grant Patent Owner's Motion to Seal and enter Exhibit A of Paper 8, which is the Board's default protective order, as the protective order in this case.

IT IS:

ORDERED that Patent Owner's Motion to Seal is granted and Exhibit 2001 shall be sealed; and

FURTHER ORDERED that the Board's default protective order is entered in this case as the protective order that covers Exhibit 2001.

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Patent 8,634,894 B2

PETITIONER:

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