

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SKECHERS U.S.A., INC.,  
Petitioner,

v.

NIKE, INC.,  
Patent Owner.

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Case IPR2017-00620 (Patent D723,783 S)  
Case IPR2017-00621 (Patent D723,781 S)<sup>1</sup>

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Before KEN B. BARRETT, GRACE KARAFFA OBERMANN, and  
SCOTT A. DANIELS, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

ORDER

*Granting Petitioner's Unopposed Motions to  
Expunge Confidential Materials from the Record  
37 C.F.R. § 42.56*

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<sup>1</sup> This order addresses issues common to both cases, therefore, we issue a single order to be entered in each case.

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On August 10, 2018, in each proceeding, Petitioner filed a Motion to Expunge Confidential Materials from the Record. Paper 80, 79 (“Motions”).<sup>2</sup> Patent Owner does not oppose the Motions. Paper 80, 2; Paper 79, 2. Petitioner seeks to expunge from the record the un-redacted versions of: 1) Exhibits 2002–2008 and Paper 22, which were sealed pursuant to Paper 40; 2) Exhibit 2039 and Paper 41, which were sealed pursuant to Paper 46; and 3) Paper 33, which were sealed pursuant to Paper 59 (marked as Paper 60). Paper 80, 2; Paper 79, 2. Collectively, those un-redacted materials are referred to in the Motions as the “Sealed Documents.” Paper 80, 2; Paper 79, 2.<sup>3</sup>

As Petitioner points out, ordinarily, the Sealed Documents would become public 45 days after final judgment; however, as Petitioner further observes, our rules permit a party to file a motion to expunge from the record confidential information prior to that information becoming public. Paper 80, 2–3; Paper 79, 2–3; *see Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,623 (Aug. 14, 2012) (establishing expectation that confidential information will become public “45 days after final judgement in a trial”); 37 C.F.R. § 42.56 (rule contemplating motions to expunge confidential information after final judgment in a trial).

Petitioner previously established good cause for sealing the Sealed Documents and, further, attests that “the Board did not cite to the sealed portions of the Sealed Documents” in the Final Written Decisions entered in

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<sup>2</sup> We refer sequentially to the paper numbers that correspond to the Motions filed in IPR2017-00620 and IPR2017-00621.

<sup>3</sup> The Sealed Documents bear the same paper and exhibit numbers in each proceeding.

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these proceedings. Paper 80, 4–5; Paper 79, 4–5. Under these circumstances, the public interest in maintaining a full and accurate history of the patents-at-issue is minimally impacted by granting the Motions. We determine that Petitioner establishes an interest in expunging the Sealed Documents that, under the particular facts and circumstances presented, outweighs any public interest in their disclosure. Paper 80, 2–5; Paper 79, 2–5.

### ORDER

Accordingly, it is

ORDERED that Petitioner’s Unopposed Motion to Expunge Confidential Materials from the Record is *granted* in each proceeding; and

FURTHER ORDERED that the un-redacted versions (that is, the versions filed under seal) of Exhibits 2002–2008, Exhibit 2039, and Papers 22, 33, and 41 shall be expunged from the record in each proceeding.

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