

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CARDIOVASCULAR SYSTEMS, INC.
Petitioner,

v.

SHOCKWAVE MEDICAL, INC.,
Patent Owner.

Case IPR2019-00409
Patent 8,728,091 B2

Before MITCHELL WEATHERLY, RICHARD MARSCHALL, and
AVELYN M. ROSS, *Administrative Patent Judges*.

ROSS, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. §§ 42.14 and 42.54

On March 19, 2020, Petitioner filed a motion to seal Exhibit 2206, the deposition transcript of Dr. Morten Olgaard Jensen, dated February 26, 2020. Paper 59 (“Motion to Seal”). Petitioner represents that “[t]he parties conferred on March 17, 2020, and patent owner does not oppose this motion.” *Id.* at 3. The Parties filed a Joint Stipulated Default Protective Order on March 17, 2020. Paper 57 (“Protective Order”).

A motion to seal may be granted for “good cause.” 37 C.F.R. § 42.54. The Board has a strong public interest in the public availability of the proceedings. Our rules are intended to “strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012) (“Trial Practice Guide”). The Trial Practice Guide explains that “the rules identify confidential information in a consistent with the Federal Rules of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.*

A redacted version of Exhibit 2206 was submitted by Petitioner as Exhibit 1366. Motion to Seal 1. Petitioner explains that Dr. Jensen testified “that he is engaged in a separate confidential relationship with Cardiovascular Systems Inc., where he is retained to provide opinions on certain patents related to angioplasty” but that “engagement is confidential and unrelated to his expert status in the instant action.” *Id.* at 2. Petitioner also argues that the redactions “are minimal and the record remains understandable to the public with the limited redactions.” *Id.*

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Having considered the arguments and evidence, we are persuaded that Petitioner has made a sufficient showing that unredacted Exhibit 2206 contains confidential, proprietary, or trade secret information. We therefore, grant the Motion to Seal Exhibit 2206 and order entry of the Protective Order as requested.

We remind the parties that information subject to a protective order will become public if identified in a final written decision in this proceeding and that a motion to expunge such information will not necessarily prevail over the public interest in maintaining a complete and understandable file history for the challenged patent. *See* Trial Practice Guide at 48,760–61.

ORDER

ORDERED that the Motion to Seal unredacted Exhibit 2206 is *granted*;

FURTHER ORDERED that the Joint Stipulated Default Protective Order (Paper 57) is hereby entered.

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