

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CARDIOVASCULAR SYSTEMS, INC.
Petitioner,

v.

SHOCKWAVE MEDICAL, INC.,
Patent Owner.

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 18, 2020, Petitioner filed a motion to seal portions of Exhibit 1365, the deposition transcript of Dr. Morten Olgaard Jensen, dated February 24, 2020. Paper 58 (“Motion to Seal”). Petitioner represents that “Counsel for petitioner and patent owner conferred on March 17, 2020 and patent owner does not oppose this motion.” *Id.* at 2.

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.* We previously entered Paper 57 as the Protective Order in this proceeding. *See* Paper 67.

A redacted version of Exhibit 1365 was submitted by Patent Owner as Exhibit 2205. Motion to Seal 1. Petitioner explains that Dr. Jensen’s testimony about “the relationship between his previous employer and the identified companies is confidential and remains confidential to his knowledge.” *Id.* at 2. Furthermore, Petitioner states that Dr. Jensen “disclosed the names after being told the information would remain confidential in these proceedings.” *Id.* Petitioner also argues that the redactions “are minimal and the record remains understandable to the public with the limited redactions.” *Id.*

IPR2019-00409
Patent 8,728,091 B2

Having considered the arguments and evidence, we are persuaded that Petitioner has made a sufficient showing that the specified portions of unredacted Exhibit 1365 contains confidential, proprietary, or trade secret information. We therefore, grant the Motion to Seal Exhibit 1365.

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 1365 is *granted*.

IPR2019-00409
Patent 8,728,091 B2

PETITIONER:

Mark C. Nelson
Jeffrey Stone
mstone@btlaw.com
jstone@btlaw.com

PATENT OWNER:

Greg H. Gardella
Natalie J. Grace
Ruth G. Davila
W. Cook Alciati
GARDELLA GRACE P.A.
ggardella@gardellagrace.com
ngrace@gardellagrace.com
rdavila@gardellagrace.com
calciati@gardellagrace.com

Michael Stallman
Morrison & Foerster LLP
mstallman@mofo.com