

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRECISION PLANTING, LLC and AGCO CORP.,
Petitioner,

v.

DEERE & COMPANY,
Patent Owner.

IPR2019-01052 (Patent 9,820,429 B2)
IPR2019-01054 (Patent 10,004,173 B2)¹

Before BARRY L. GROSSMAN, JAMES A. TARTAL, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

ORDER

Granting Petitioner's Unopposed Motion to Seal and
for Entry of Protective Order
37 C.F.R. §§ 42.14, 42.54

¹ We exercise our discretion to issue one order to be filed in each proceeding. The parties may use this style heading only if the paper includes a statement certifying that the identical paper is being filed in each proceeding listed in the caption.

I. INTRODUCTION

In the above-captioned cases, Petitioner filed an unopposed motion to seal confidential versions of Petitioner’s Reply to Patent Owner’s Response (Paper 58) and Exhibits 1045, 1046, 1048, 1049, 1050, 1052, 1054, 1069, 1131, and 1135. Paper 56 (“Motion” or “Mot.”).² Petitioner also moves to enter the Board’s Default Protective Order, filed in the Motion as Appendix A (“Protective Order”). Mot. 5–6.

For the reasons discussed below, Petitioner’s Motion is *granted*. Because Patent Owner previously showed good cause to seal Exhibit 2033 (*see* Paper 35, 6–8), we also now seal the confidential version of Exhibit 2033 under the Protective Order.

II. MOTION FOR ENTRY OF PROTECTIVE ORDER

Relevant to this Motion, the Office Patent Trial Practice Guide states:

4. *Protective Orders*: A party may file a motion to seal where the motion contains a proposed protective order, such as the default protective order in Appendix B. 37 C.F.R § 42.54. Specifically, protective orders may be issued for good cause by the Board to protect a party from disclosing confidential information. 37 C. F. R. § 42.54. Guidelines on proposing a protective order in a motion to seal, including a Default Protective Order, are provided in Appendix B. The document or thing will be protected on receipt of the motion and remain so, pending the outcome of the decision on motion.

Consolidated Office Patent Trial Practice Guide (“Consolidated Practice Guide”), November 2019, at 19–20.³

Petitioner states “[t]he parties hereby certify that they accept and agree to the terms of the Board’s default protective order,” and seeks entry

² We cite to the papers and exhibits filed in IPR2019-01052. Similar papers and exhibits were filed in IPR2019-01054.

³ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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of the Protective Order filed as Appendix A. Mot. 5–6, App. A, 1–6. This Protective Order is entered in each of the above-identified proceedings and will now apply to all documents entitled to confidentiality in these proceedings.

III. MOTION TO SEAL

Petitioner moves to seal Petitioner’s Reply to Patent Owner’s Response (Paper 58) and Exhibits 1045, 1046, 1048, 1049, 1050, 1052, 1054, 1069, 1131, and 1135. Mot. 1. Petitioner asserts that “Patent Owner does not oppose this motion.” *Id.*

The record for an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. There is a strong public policy that favors making information filed in *inter partes* review proceedings open to the public. *See Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001, Paper 34 (PTAB March 14, 2013) (discussing the standards of the Board applied to motions to seal). Unlike in district court, where a party routinely will determine whether a document is produced under the terms of a district court protective order, in an *inter partes* review, “the default rule is that all papers . . . are open and available for access by the public.” *See Garmin* at 2. The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54. The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. *See Garmin* at 3. Further, redactions to documents should be limited to the minimum amount necessary to protect confidential

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information, and the thrust of the underlying argument or evidence must be clearly discernible from the redacted versions. *See* Scheduling Order, Paper 20, 2–3; *see also* Consolidated Practice Guide at 91–92.

A. Exhibits 1050, 1052, and 1054

Regarding Exhibits 1050, 1052, and 1054, Petitioner states:

Exhibit 1050 is an internal Deere document that Deere produced in [the related district court proceeding, *Deere & Co. v. AGCO Corp. & Precision Planting, LLC*, No. 1:18-cv-00827-CFC (D. Del. Feb. 25, 2019)]. It is a Deere internal competitive product analysis. Deere marked the document “John Deere Confidential” and contends that the document contains confidential Deere information. Patent Owner maintains that the entire exhibit is confidential.

Exhibit 1052 is a document produced by Deere in the above-referenced district court proceeding. It refers to Deere business strategy and potential business acquisitions. Deere marked the document as “Confidential” and contends that the document contains Deere confidential information. Patent Owner maintains that the entire exhibit is confidential.

Exhibit 1054 is a document produced by Deere in the above-referenced district court proceeding and comprises a confidential business communication between an employee of one of Deere’s dealers and employees of Deere regarding business strategy. Patent Owner maintains that the entire exhibit is confidential.

Mot. 3–4.

Upon reviewing Exhibits 1050, 1052, and 1054, we agree with Petitioner that the information at issue is confidential business information. *See* 37 C.F.R. § 42.2 (“Confidential information means trade secret or other confidential research, development, or commercial information.”). Considering the sensitivity of the information and the potential competitive harm were the information disclosed publicly at this time, we determine good cause to seal the documents has been shown. Further, each of Exhibits

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1050, 1052, and 1054 appears to contain confidential business information in its entirety. Accordingly, we grant the Motion to seal Exhibits 1050, 1052, and 1054, which shall be subject to the Protective Order.

B. Exhibits 1045, 1046, 1048, 1049, and 1069

Exhibits 1045, 1046, 1048, 1049, and 1069 are deposition transcripts from the related district court proceeding. Mot. 2–4. According to the Motion, each transcript contains “confidential Deere information relating to Deere’s product design and development process.” *Id.* Upon reviewing Exhibits 1045, 1046, 1048, 1049, and 1069, we agree with Petitioner that the information at issue is confidential business information. Further, Petitioner has filed public, redacted versions of Exhibits 1045, 1046, 1048, 1049, and 1069 that appear to be tailored narrowly to redact only confidential information. Accordingly, we grant the Motion to seal the confidential version of Exhibits 1045, 1046, 1048, 1049, and 1069, which shall be subject to the Protective Order.

C. Exhibits 2033 and 1131

As Petitioner notes (Mot. 2), Patent Owner previously moved to seal Exhibit 2033 (Paper 32) because it contains sensitive confidential information of Patent Owner relating to sales and production volumes, and Petitioner did not oppose.⁴ We found good cause to seal Exhibit 2033, but did not do so previously because we denied entry of the proposed protective order. Paper 35, 7–8. Concerning the proposed protective order, we stated, “Patent Owner has not adequately justified the proposed modifications to the Default Protective Order. Patent Owner’s generalized argument that

⁴ In related proceedings, Petitioner opposed entry of Patent Owner’s proposed protective order, but did not oppose sealing Exhibit 2033. *See, e.g.*, IPR2019-01044, Paper 34, 1–2.

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