

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VETERINARY ORTHOPEDIC IMPLANTS, INC.,
Petitioner,

v.

DEPUY SYNTHES PRODUCTS, INC.,
Patent Owner.

IPR2019-01331 (Patent 8,523,921 B2)
IPR2019-01332 (Patent 8,523,921 B2)
IPR2019-01333 (Patent 8,523,921 B2)¹

Before HYUN J. JUNG, CHRISTOPHER G. PAULRAJ, and
TIMOTHY G. MAJORS, *Administrative Patent Judges*.

MAJORS, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Supplemental Motion to Seal

37 C.F.R. §§ 42.14, 42.54

Granting Patent Owner's Motion to Expunge

37 C.F.R. § 42.5

¹ We exercise our discretion to issue one Order to be filed in each of the above-listed proceedings. Parties are not authorized to use this caption format absent permission of the Board.

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I. INTRODUCTION

On January 10, 2020, we authorized Patent Owner to file a Supplemental Motion to Seal related to Exhibits 2100 and 2112. Paper 15.² We further authorized Patent Owner to file a Motion to Expunge related to Exhibit 2109. *Id.*

On January 16, 2020, Patent Owner filed a Supplemental Motion to Seal (Paper 17), and also filed a Motion to Expunge (Paper 16) as described above. At the same time, Patent Owner filed redacted versions of Exhibits 2100 and 2112, and a corrected Exhibit 2109. For the reasons discussed below, Patent Owner's two motions are granted.

II. DISCUSSION

As provided under Rule 42.54(a), “[t]he Board may, for good cause, issue an order to protect a party from disclosing confidential information,” including forbidding the disclosure of protected information or specifying the terms under which such information may be disclosed. 37 C.F.R. § 42.54(a). The Board also observes a strong policy in favor of making all information filed in *inter partes* review proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

Under 37 C.F.R. § 42.14, the default rule is that all papers filed in such proceedings are available to the public. Only “confidential

² Unless otherwise noted, all citations are to the papers and exhibits filed in IPR2019-01331 (with the same or substantially the same papers and exhibits having been filed in IPR2019-01332 and IPR2019-01333).

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information” is subject to protection against public disclosure. 35 U.S.C. § 326(a)(7); 37 C.F.R. § 42.55. In that regard, as noted in the Office’s Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012):

The rules aim 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

....

Confidential Information: The rules identify confidential information in a manner 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. § 42.54.

Patent Owner, as the moving party, bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). And the standard for granting Patent Owner’s requested relief is “good cause.” 37 C.F.R. § 42.54(a); *Argentum*, Paper 27 at 3–4. To demonstrate “good cause,” Patent Owner must make a sufficient showing that:

(1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

Argentum, Paper 27 at 3–4; *see also Corning Optical Communications RF, LLC, v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB April 6, 2015) (requiring a showing that information has not been “excessively redacted”).

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According to Patent Owner, the redacted portions of Exhibits 2100 and 2112 reflect confidential “internal research and development” information and/or “commercially sensitive product design files and business plans,” related to its products. Paper 17, 1. Patent Owner also asserts that the redacted portions in Exhibit 2112 quote, discuss, or reflect the contents of other exhibits that were sealed in their entirety here. *Id.* Patent Owner states that the aforementioned “highly-confidential information” has been marked as such in related district court litigation, and that public disclosure of this information could result in competitive harm—as it includes non-public details about, *inter alia*, Patent Owner’s business practices and product designs. *Id.* at 1–2.

We are persuaded that good cause exists to seal Exhibits 2100 and 2112. Patent Owner has now filed public, redacted versions of those exhibits, which appear to more narrowly redact Patent Owner’s confidential information including, among other things, apparently non-public product design information.³

Turning to the Motion to Expunge, we are persuaded that the version of Exhibit 2109 that was filed on October 25, 2019, should be expunged due to a clerical error that occurred when it was filed. Paper 16, 1. A corrected Exhibit 2109 has now been filed for the record. *Id.*

³ Petitioner did not oppose Patent Owner’s original motion, which sought to seal Exhibits 2100 and 2112 in their entirety, and therefore, we understand that Petitioner is not opposing Patent Owner’s narrower, supplemental motion.

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III. ORDER

It is

ORDERED that Patent Owner's Supplemental Motion to Seal (Paper 17) in each of the above-identified cases is *granted* and the unredacted versions of Exhibits 2100 and 2112 are, accordingly, sealed; and

FURTHER ORDERED that Patent Owner's Motion to Expunge (Paper 16) in each of the above-identified cases is *granted*, and Exhibit 2109 (i.e., the version filed October 25, 2019) will, accordingly, be expunged from the record.

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