UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GARDNER DENVER, INC.
Petitioner,

v.

UTEX INDUSTRIES, INC.
Patent Owner

Case IPR2020-00333
Patent No. 10,428,949

JOINT MOTION TO SEAL PURSUANT TO PROTECTIVE ORDER

Pursuant to 37 C.F.R. §§ 42.14 and 42.54 and the Protective Order concurrently filed in this proceeding on July 9, 2020 ("Protective Order") (Paper 8, Ex. A), Patent Owner, Utex Industries, Inc. ("Utex"), and Petitioner, Gardner Denver, Inc. ("Gardner Denver") respectfully submit this Motion to Seal.

I. DOCUMENTS TO BE SEALED

A. Preliminary Response

Patent Owner's Preliminary Response contains confidential information of Petitioner related to Ex. 2001, which has been designated as "Protective Order Material" pursuant to the Protective Order. Specifically, Patent Owner's Preliminary Response discusses at page 58 material from paragraph 194 of Vinod Sharma's Declaration (Ex. 2001 to the Patent Owner's Preliminary Response) which is confidential information of Gardner Denver, as explained below. Paper No. 7 at 58.

B. Ex. 2001

Mr. Sharma's Declaration contains discussions of the confidential material regarding Gardner Denver's research and development efforts which has been designated as Protective Order Material by Petitioner. Specifically, in paragraph 194 of his declaration, Mr. Sharma indicates that he has reviewed certain documents from Gardner Denver and summarizes information that he asserts the documents show. Ex. 2001 ¶ 194. This information relates to Gardner Denver's research and development efforts prior to the issuance of a Utex patent to which the patent at issue

in this proceeding claims priority. *See id.* That patent is also asserted against Gardner Denver in a co-pending litigation between Utex and Gardner Denver. The documents and information regarding Gardner Denver's research and development efforts have been designated as "Highly Confidential-Attorneys' Eyes Only" pursuant to the Protective Order in that litigation because they comprise details regarding Petitioner's confidential research and development for its packing products that Petitioner deems especially sensitive. As such, Ex. 2001 contains designated Protective Order Material that should be sealed pursuant to the Protective Order. Pursuant to Section 5(A)(ii) of the Protective Order, Utex and Gardner Denver will confer regarding the scope of redactions necessary to seal this Protective Order information, and will file public redacted non-confidential versions of the Preliminary Response and Ex. 2001.

II. GOOD CAUSE FOR SEALING THE IDENTIFIED DOCUMENTS

When enacting *inter partes* reviews ("IPRs"), Congress directed the Patent Trial and Appeal Board ("the Board") to "provid[e] for protective orders governing the exchange and submission of confidential information." 35 U.S.C. § 316(a)(7). Thus, "[t]he Board may, for good cause, issue an order to protect a party or person from disclosing confidential information . . ." 37 C.F.R. § 42.54(a). In *Argentum Pharmaceuticals LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (Jan. 19, 2018), the Board set forth the standard for sealing confidential information:

> [A] movant to seal must demonstrate adequately 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.

Id. at 3. While there is a presumption in favor of public disclosure, and the burden is on the movant to seal, application of the foregoing factors should be tempered by reasonableness, which is the touchstone of good cause. Overly harsh or stringent application of the "good cause" requirement would be contrary to Congress' intent that IPRs be conducted in a "timely, fair, and efficient manner" as an alternative to expensive court litigation of patent validity. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,756 (Aug. 12, 2012).

As explained below, the *Argentum* factors confirm that the information the Parties seek to protect from public disclosure should indeed be sealed in this proceeding.

A. Confidential

The information regarding Gardner Denver's confidential research and development efforts that appears in Exhibit 2001 and the Preliminary Response is truly confidential. That information is not publicly available. More specifically, Gardner Denver asserts that Exhibit 2001 has discussion of Gardner Denver's

confidential research and development efforts prior to the issuance of the patent-in-suit in the co-pending litigation between Gardner Denver and Utex. Gardner Denver further asserts that, if published, this information could adversely affect Gardner Denver. For example, Gardner Denver asserts that Mr. Sharma's description of its confidential research and development efforts both discloses sensitive information about those efforts and is incomplete. Gardner Denver asserts that in order for Gardner Denver to provide the full context, it would have to disclose additional confidential research and development information. Gardner Denver further asserts that disclosure of the sensitive information that is already in Mr. Sharma's declaration would harm its ability to compete in the marketplace. While Utex does not agree that Mr. Sharma's description of such information is incomplete or that Gardner Denver would have to disclose additional confidential research and development information in response to Mr. Sharma, Utex consents to the information being treated as confidential information for the purposes of this proceeding.

B. Concrete Harm from Public Disclosure

Gardner Denver believes that public disclosure of the information in Exhibit 2001 and relied upon in the Preliminary Response would cause concrete harm to the Gardner Denver. As discussed above, Gardner Denver asserts that Mr. Sharma's discussion of its confidential research and development efforts is incomplete, and

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