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Paper 16
Entered: March 31, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SIEMENS GAMESA RENEWABLE ENERGY, INC.,
Petitioner,

v.

GENERAL ELECTRIC COMPANY,
Patent Owner.

IPR2022-01279
Patent 7,629,705 B1

Before BARBARA A. PARVIS, JEFFREY W. ABRAHAM, and SCOTT B. HOWARD, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

ORDER
Granting Motion to Seal and Entry of Protective Order
37 C.F.R. §§ 42.14 and 42.54

I. INTRODUCTION

Siemens Gamesa Renewable Energy Inc. ("Petitioner"), filed a motion seeking entry of a protective order and sealing Exhibits 1052 through 1058. Paper 3 ("Motion to Seal" or "Mot.). General Electric Company ("Patent Owner) did not file an opposition.

For the reasons we discuss below, we *grant* the Petitioner's Motion to Seal and enter a protective order in this proceeding.

II. STANDARD OF REVIEW

There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review that determines the patentability of claims in an issued patent and, therefore, impacts the rights of the public. Under 35 U.S.C. § 316(a)(1), the default rule is that all papers and exhibits filed in an *inter partes* review are open and available for access by the public. A party may, however, file papers or exhibits under seal together with a motion to seal, whereupon the papers or exhibits will be treated as sealed pending the outcome of the motion. *Id.*

Only "confidential information" may be protected from disclosure. 35 U.S.C. § 316(a)(7) (2018) ("The Director shall prescribe regulations . . . providing for protective orders governing the exchange and submission of confidential information."). In that regard, the Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) ("Trial Practice Guide"),[1] provides the following:

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[1] *Available at* https://www.uspto.gov/TrialPracticeGuideConsolidated.

> 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.
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> . . . .
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> 2. Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. 37 C.F.R. § 42.54.

Trial Practice Guide at 19.

As the party seeking to protect its confidential information, the movant has the burden of proof to show that it is entitled to the requested relief. *See* 37 C.F.R. § 42.20(c) (2022). The standard for granting a motion to seal is "for good cause." 37 C.F.R. § 42.54. A motion to seal must include a proposed protective order and a certification that the movant has in good faith conferred or attempted to confer with the other party in an effort to come to an agreement as to the scope of the proposed protective order. *See id.*

In *Argentum Pharmaceuticals LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative), the Board set forth the following four factors it will consider when determining whether the moving party has shown good cause to seal 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.

Argentum at 4.

III. ANALYSIS

In the Motion to Seal, Petitioner requests that the Board enter the default protective order as set forth in Appendix A of the Trial Practice Guide. Mot. 3; *see also* Paper 14 (Submission of Proposed Protective Order); Ex. 1059 (Proposed Protective Order)

Petitioner argues that the good cause standard for granting the Motion to Seal is satisfied. *See* Mot. 3–5. Specifically, Petitioner argues that it has maintained Exhibits 1053 through 1058 since they were created in 2006 and that Exhibit 1052 is testimony discussing those Exhibits. Mot. 1–2, 3. Petitioner further argues that because the products discussed in the email are still in operation, Petitioner "would suffer a concrete harm if the exhibits were disclosed publicly." Mot. 4. Petitioner further argues that "there exists a need to rely on the information sought to be sealed" when considering secondary considerations and the documents should be sealed in their entirety because they "all refer to trade secret materials that, to Petitioner's knowledge, have not become public through other means." Mot. 5

After reviewing Exhibit 1053 through 1058, we agree that the exhibits describe Petitioner's confidential trade secrets. We also are mindful of the parties' representations that there is a genuine need to rely on the exhibits in the Petition. Based on these particular circumstances, we find good cause to *grant* the Joint Motions to Seal Exhibit 1052 through 1058.

With regard to Exhibit 1052, we agree with Petitioner that it describes the confidential materials of Exhibits 1053 through 1058 and that those

portions can be sealed. However, Exhibit 1052 also contains information that Petitioner has not shown to be confidential. For example, it does not appear that Mr. Brogan's work history, the background information, or discussion of prior testimony is confidential. Accordingly, Petitioner shall file a redacted version of Exhibit 1052. The redactions shall be limited to discussions of the information contained in Exhibits 1053 through 1058.

In addition, because Patent Owner does not object, we enter the proposed Protective Order set forth in Exhibit 1059.

IV. CONCLUSION

For the foregoing reasons, we *grant* the currently pending motion to seal and for entry of a protective order.

We also remind the parties of the public's interest in maintaining a complete and understandable file history, and of the general expectation that information will be made public where the existence of the information is identified in a final written decision following a trial. See Trial Practice Guide, 21–22. We also note that confidential information subject to a protective order ordinarily becomes public 45 days after denial of an institution decision or entry of a final judgment in a trial. *See id.* After the denial of institution or entry of final judgment, a party may file a motion to expunge confidential information from the record prior to the information becoming public. *See id.*; 37 C.F.R. § 42.56.

V. ORDER

Accordingly, it is hereby:

ORDERED that the Motion to Seal (Paper 3) is *granted*;

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