

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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C&D ZODIAC, INC.  
Petitioner,

v.

B/E AEROSPACE, INC.  
Patent Owner.

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Case PGR2017-00019  
Patent D764,031

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**PATENT OWNER'S MOTION TO EXPUNGE CONFIDENTIAL  
MATERIALS FROM THE RECORD PURSUANT TO 37 C.F.R. § 42.56**

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## **I. RELIEF REQUESTED**

Pursuant to 37 C.F.R. § 42.56, B/E Aerospace, Inc. ("Patent Owner") respectfully submits this motion to expunge from the record the following confidential Exhibits: 1029, 2020, 2038, 2039, 2040, 2048, 2049, 2050, 2051, 2053, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2077, 2078, 2079, 2089, 2090, 2091, 2092, 2096, 2097, and 2098, which were sealed pursuant to Paper 37 (the Final Written Decision). Collectively, these exhibits are referred to herein as the "Sealed Documents."

## **II. CERTIFICATION**

Counsel for Patent Owner certifies that it has conferred with counsel for Petitioner regarding the relief sought, and Petitioner does not oppose this Motion to Expunge.

## **III. GOVERNING LAW, RULES, AND PRECEDENT**

This motion is authorized by section 42.56, which states that "[a]fter denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record." 37 C.F.R. § 42.56.

The Rules of Practice for Trials Before the Patent Trial and Appeal Board provide:

Confidential information that is subject to a protective order ordinarily will become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial. Section 42.56 allows a party to file a motion to

expunge from the record confidential information prior to the information becoming public. ... [T]here is an expectation that information be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or identified in a final written decision.

77 Fed. Reg. 48623.

Granting a motion to seal confidential information requires a showing of "good cause." 37 C.F.R. § 42.54. The same standard applies to a motion to expunge "confidential information" under 37 C.F.R. § 42.56 after institution is denied. *RPX Corp. v. VirnetX Inc.*, IPR2014-00171, Paper 62 at 3 (PTAB Sept. 9, 2014).

The Board has held that it is appropriate to expunge confidential information where a patent owner filed confidential information of the petitioner and where the Board did not rely on that confidential information in its decision. *See Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 97, at 4 (PTAB Apr. 15, 2015) ("In considering motions to expunge, it is appropriate to guard against peripheral disclosure of a party's confidential information because arguments were advanced by an opposing party that ultimately proved unimportant to the merits of the proceeding.").

#### **IV. PROCEDURAL HISTORY**

The Board entered its Final Written Decision on October 23, 2018. Paper 37. In its Final Written Decision, the Board did not cite to the Sealed Documents to support its decision. *See id.*

#### **V. GOOD CAUSE SUPPORTS EXPUNGING THE SEALED DOCUMENTS**

The Board has already found "that a sufficient basis exists to seal the exhibits in question." *See* Paper 37, 35. Collectively, the Sealed Documents reflect material that includes confidential and business sensitive information of Patent Owner, Petitioner, and Related Entities, the disclosure of which would cause competitive harm to one or more of those entities. *See* Paper 8, 2; Paper 20, 1; Paper 28, 1.

Given that Patent Owner has established that the Sealed Documents constitute confidential information deserving of protection, the inquiry turns to whether Patent Owner's interest in maintaining that protection through expungement "outweighs the public's interest in maintaining a complete and understandable history of this *inter partes* review." *See Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 97, at 2 (PTAB Apr. 15, 2015). Because the Board did not cite to the Sealed Documents to support its decision, "the public's interest in maintaining a complete and understandable file history is not prevented by expunging the identified confidential information." *See*

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*Celltrion, Inc., v. Genentech, Inc.*, IPR2016-01667, Paper 31, at 3 (PTAB July 23, 2018).

## VI. CONCLUSION

For the foregoing reasons, good cause exists for the Board to grant this Motion to Expunge.

Dated: December 7, 2018

Respectfully submitted,

/s/ Michael R. Fleming

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