

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BASF CORPORATION,
Petitioner,

v.

INGEVITY SOUTH CAROLINA, LLC,
Patent Owner.

PGR2020-00037
Patent 10,323,553 B2

Before JON B. TORNQUIST, CHRISTOPHER M. KAISER, and
JULIA HEANEY, *Administrative Patent Judges*.

HEANEY, *Administrative Patent Judge*.

ORDER

Granting Joint Motion to Seal Final Written Decision on Remand
37 C.F.R. §§ 42.5, 42.14

INTRODUCTION

On January 26, 2024, we issued under seal a Final Written Decision on Remand. *See* Paper 85. In the Decision, we ordered the parties “within ten days after the issuance of this decision, to file a joint motion to seal explaining why this decision should remain under seal and including a redacted version of this decision that can be made publicly available.”¹ *Id.* at 22.

On February 2, 2024, Petitioner and Patent Owner timely filed a Joint Motion to Seal (Paper 86 (“Motion”)) the Board’s Final Written Decision on Remand and a proposed redacted public version (Ex. 2086) of the Final Written Decision on Remand.

In the Motion, the parties request that we seal the Final Written Decision on Remand in its entirety because it discusses the confidential Guo Memo. Paper 86, 3. The parties explain that the confidential Guo Memo discussed in the Final Written Decision on Remand includes “confidential internal testing results” and more particularly, “confidential and proprietary development and technical information which would not normally be revealed to third parties (Paper 10, 2) and, if it were publicly disclosed, would impose competitive injury and economic harm to Ingevity,” and “confidential information and technical know-how that would impose competitive injury and economic harm to Ingevity if it were publicly disclosed.” Paper 86, 3–4. The parties note that the Board has already found good cause to seal the Guo Memo itself. *Id.* at 3; *see* Paper 73. The parties certify that the information sought to be sealed has not been

¹ We entered a Protective Order in this proceeding on July 29, 2020. Ex. 2013.

published or otherwise made public. Paper 86, 1, 4. The parties submit that the “proposed redacted Final Written Decision on Remand (Exhibit 2086) is consistent with the redacted version of the Guo Memo published as Exhibit 2085.” *Id.* at 4. The parties also explain that “[r]ather than redacting the entirety of the discussion about the Guo Memo, Ingevity has redacted limited portions of the Final Written Decision on Remand that allows the public to understand the basis for the Board’s decision without revealing the confidential internal testing results from the Guo Memo.” *Id.* at 3. The parties also “jointly agree that the Redacted Version [of the Final Written Decision on Remand] (Exhibit 2086) does not contain any Confidential Information of either party and therefore, move to publish that to the public.” *Id.* at 1, 3–4.

For the reasons below, we *grant* the Joint Motion to Seal.

DISCUSSION

Except as ordered otherwise, proceedings before the Board are available to the public. The Board’s standards for granting motions to seal are discussed in *Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001, Paper 34, 1 (PTAB March 14, 2013) (“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 which determines the patentability of claims in an issued patent and therefore affects the rights of the public.”)

In post-grant review, the moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). A party moving to seal must show “good cause” for the relief requested. 37 C.F.R. § 42.54(a). The “good cause” standard includes 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. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

Having considered the Motion to seal, we determine that there is good cause for granting the Motion with respect to all information. Specifically, the parties demonstrate that the information they seek to seal consists of sensitive business, technical, and research and development strategy information that has not been published or otherwise made public. Given the subject matter of the information redacted, and the mutual agreement between the parties on the redactions, we determine that the redacted passages are confidential, that Petitioner, Patent Owner, or a third party would be harmed by not redacting the information, that the parties had a need to rely on this information at trial, and that the interest in maintaining the information as confidential outweighs the public interest in having the information unsealed.

Accordingly, we conclude that good cause exists to maintain under seal the Final Written Decision on Remand (Paper 85), and we *grant* the Joint Motion to Seal.

CONCLUSION

For the reasons above, we *grant* the Joint Motion to Seal.

ORDER

It is hereby:

ORDERED that the Joint Motion to Seal (Paper 86) is *granted*;

FURTHER ORDERED that the confidential Final Written Decision on Remand issued January 26, 2024 (Paper 85) is *maintained* under seal; and

FURTHER ORDERED that the parties shall, within ten days of the issuance of this Order, file as a paper a version of the proposed redacted Final Written Decision on Remand (Exhibit 2086), without the exhibit designation and with a revised paper number.

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