

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GREENE'S ENERGY GROUP, LLC
Petitioner

v.

OIL STATES ENERGY SERVICES, LLC
Patent Owner

Case IPR2014-00216

Patent 6,179,053

**PATENT OWNER'S COMBINED MOTION TO SEAL
AND MOTION FOR PROTECTIVE ORDER**

Pursuant to 37 C.F.R. § 42.54, and the conference with the Board authorizing the motion on August 25, 2014, Patent Owner Oil States Energy Services, LLC (“OSES”) moves to file certain Exhibits filed with its Motion To Amend Claims (Paper 21) under seal. As detailed below, these Exhibits contain highly confidential and extremely sensitive information related to financial matters pertaining to Patent Owner’s core business. Further, as set forth below, Patent Owner also requests entry of the Protective Order attached to this Motion.

Counsel for Patent Owner contacted Counsel for Petitioner, Greene’s Energy Group, LLC (“GEG”) and requested Petitioner’s consent to file certain Exhibits under seal and for consent to enter a modified Protective Order. The parties have been unable to reach an agreement with respect to the modified Protective Order, and Patent Owner understands that Petitioner opposes this motion. Specifically, although Petitioner has not objected to the filing of certain materials under the Default Protective Order, Petitioner objects to the two-tiered format of the Modified Protective Order proposed by Patent Owner that includes an “Attorneys’ Eyes Only” provision. Counsel for Petitioner insists that Greene’s in-house counsel be allowed to have access to the Attorneys’ Eyes Only materials that Patent Owner seeks to have sealed. However, due to the granular and highly confidential nature of the Attorneys’ Eyes Only information contained in the relevant Exhibits, Patent Owner requests that that the attached

Modified Protective Order, which differs from the Model Protective Order only in that it contains a second tier of confidentiality, be entered so that the small number of identified exhibits may be designated “Attorneys’ Eyes Only.” Further, Patent Owner seeks to have certain Confidential (but not Attorneys’ Eyes Only) information sealed from public view under paragraph 2 of the Modified Protective Order, which mirrors the provisions for Confidential material in the Default Protective Order.

I. GOOD CAUSE EXISTS FOR SEALING CONFIDENTIAL INFORMATION

The Office Patent Trial Practice Guide provides that “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.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, those 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.” *Id.* (citing 37 C.F.R. § 42.54).

As summarized in Table 1 below and detailed below, Patent Owner is submitting two categories of financial information to support arguments presented in Patent Owner’s Motion to Amend. The first category of

Confidential information includes summary and other high-level financial information that falls under paragraph 2 of the Modified Protective Order.¹

Patent Owner does not believe there is any dispute that this “Category 1” information would be considered Confidential even under the Default Protective Order, and thus should be sealed under the “standard” confidentiality provisions. Based on the arguments presented in the Motion to Amend, Patent Owner believes that the Board will need to rely only on this summary information in making its determinations. Similarly, Patent Owner believes that the Petitioner will need to rely only on this summary information in formulating its arguments in response to the Motion to Amend. Patent Owner acknowledges and understands the Board’s comments that Confidential materials relied on in any decision regarding patentability may become part of the public record.

The second category of information is Highly Confidential – Attorneys’ Eyes Only – financial information at a granular and competitively significant level. There are only four spreadsheets that would qualify as “Category 2” information, copies of which are attached to this Motion for the Board’s *in camera* review. This information serves as the underlying foundation for the summary information provided as “Category 1” material. Patent Owner presents this level of detail only to provide the Board and Petitioner with its basis for the

¹ As noted, this information would also be considered Confidential information under the Default Protective Order.

arguments and conclusions presented as summary information associated with the Motion to Amend. That is, this detailed supporting information is not material to any arguments or claims presented by the parties and will not be necessary for any determination of patentability. For example, the names of customers and the number of orders each customer placed, is not material to patentability, nor does Petitioner need access to this type of invoice-level detail to formulate its arguments in opposition to Patent Owner's Motion to Amend. Instead, only the aggregate sales volumes or revenue numbers presented as summary information (*i.e.*, Category 1 material) are relevant to the financial arguments presented by Patent Owner.

This type of highly confidential financial information has been designated Attorneys' Eyes Only in the co-pending litigation and Petitioner's in-house counsel and employees have not—and will not—have access to this information under the Protective Order in that case. Indeed, detailed customer-level information would typically never be provided to Petitioner's in-house counsel or the general public in any context. Such disclosure of this information would significantly harm Patent Owner's competitive position as it would allow a direct competitor to access some of the most sensitive financial information there is. Allowing Petitioner access to Patent Owner's "crown jewels" of financial information in this proceeding would be both unnecessary and dangerous.

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