

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GREENE'S ENERGY GROUP, LLC, INC.  
Petitioner

v.

OIL STATES ENERGY SERVICES, LLC,  
Patent Owner

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Case IPR2014-00216  
Patent 6,179,053 B1

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SCOTT E. KAMHOLZ, *Administrative Patent Judge.*

DECISION  
On Patent Owner's Motion to Seal  
*37 C.F.R. § 42.5*

Patent Owner filed a motion to seal certain evidence. Paper 22 (“Mot.”). Patent Owner offers the evidence sought to be sealed in support of its Motion to Amend. *Id.* at 2. In its motion, Patent Owner also proposes the entry of a protective order (Exhibit 2032) that differs from the default protective order in that it seeks to create a special class of confidential information marked “PROTECTIVE ORDER MATERIAL—ATTORNEY’S EYES ONLY.”<sup>1</sup> *Id.* With regard to the opposing party, the “Attorney’s Eyes Only” information would be made available only to the opposing party’s outside counsel and experts, not to the opposing party itself, party representatives other than outside counsel, in-house counsel, or other employees or consultants of the opposing party. Ex. 2033, 3-5. The “Attorney’s Eyes Only” information would also be made available to certain employees and representatives of the U.S. Patent and Trademark Office, and to certain support personnel. *Id.* at 4-5. Petitioner does not contest Patent Owner’s designation of information as confidential information, but argues that any such information should be subject to the standard protections of the default protective order only, not to the heightened protections Patent Owner proposes for the “Attorney’s Eyes Only” information. Paper 26 (“Opp.”), 1.

Patent Owner has designated as “confidential information” subject to standard protections portions of its Motion to Amend (Paper 23) and portions of the declaration of Thomas W. Britven with attachments (Exhibit 2018), Mot. 7-8. Patent Owner has submitted a redacted version of Exhibit 2018 (also numbered 2018), as well as a redacted version of the

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<sup>1</sup> A mark-up comparison between the proposed protective order and the default protective order was filed as Exhibit 2033.

Motion to Amend (as Paper 21). Patent Owner argues that good cause exists to seal the material redacted, because it contains “confidential financial information.” Mot. 7-8. Petitioner does not contest Patent Owner’s request to maintain the material redacted from Exhibit 2018, and its attachments, as confidential information. Paper 26 (“Opp.”) 1.

Patent Owner also has submitted four exhibits with the “Attorney’s Eyes Only” designation: Exhibits 2024 and 2025, which are described as containing Patent Owner’s sales data for certain products, Exhibit 2026, which is described as containing Patent Owner’s tool count data, and Exhibit 2027, which is described as containing yearly financial data. Paper 25, 3 (Patent Owner’s list of exhibits as of Aug. 28, 2014). Patent Owner contends that these exhibits contain “highly confidential financial information” (Mot. 10), disclosure of which to Petitioner’s in-house counsel and employees would cause “significant harm” to Patent Owner. Mot. 5. Patent Owner represents that the “highly confidential” information presented in Exhibits 2024-2027 has been presented in “aggregate” and “summarized” form in certain attachments to Exhibit 2018. *Id.* at 8-9. The relevant attachments to Exhibit 2018 have been submitted as “confidential information” but not with the “Attorney’s Eyes Only” designation. *Id.* at 7-8. Patent Owner represents that the information in Exhibits 2024-2027 is of a type that has been made available to Petitioner only under similar “Attorney’s Eyes Only” conditions in related district court litigation. Mot. 5.

Petitioner does not contest Patent Owner’s designation of the contents of Exhibits 2024-2027 as confidential information, but it argues that this material should be subject to the standard protections only, not to the

heightened protections Patent Owner proposes for the “Attorney’s Eyes Only” information. Opp. 1. Petitioner represents that its in-house counsel is not involved in competitive decision-making and is not in a position to harm Patent Owner by having access to the information in question. Opp. 3. Petitioner argues that its in-house counsel must have access to the “Attorney’s Eyes Only” information in order to formulate its opposition to Patent Owner’s Motion to Amend. *Id.* at 3-4.

The record for an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54. There is a strong public policy that favors making information filed in *inter partes* review proceedings open to the public. *See Garmin International v. Cuozzo Speed Technologies, LLC*, Case IPR2012-00001, slip op. at 1-2 (PTAB March 14, 2013) (Paper 34) (discussing the standards of the Board applied to motions to seal). *Id.* at 1-2. The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. In addition, a motion to seal is required to include a certification that the moving party has, in good faith, conferred, or attempted to confer, with the opposing party in an effort to come to an agreement on the scope of the protection sought. *See Garmin*, Paper 34 at 3.

Upon consideration of the parties' arguments, the proposed protective order, and the information sought to be redacted, Patent Owner's motion is granted.

Petitioner does not contest Patent Owner's request to treat portions of Exhibit 2018 and its attachments as confidential information subject to the standard protections of the default protective order. Patent Owner has shown that the material sought to be redacted is, or at least appears on its face to be, confidential financial information. Patent Owner's proposed redactions are reasonable and are limited strictly to isolated passages consisting entirely of confidential information, such that the thrust of the underlying argument or evidence is clearly discernable from the redacted versions.

As to Exhibits 2024-2027, Patent Owner bears the burden of establishing its entitlement to the relief it requests, i.e., heightened restrictions on access. *See* 37 C.F.R. § 42.20(c).

The purpose of a protective order is to prevent inadvertent compromise of confidential information. *In re Deutsche Bank Trust Co. Americas*, 605 F.3d 1373, 1378 (Fed. Cir. 2010). Access to confidential information by in-house counsel cannot be denied simply on the basis of counsel's in-house status. *U.S. Steel Corp. v. United States*, 730 F.2d 1465, 1469 (Fed. Cir. 1984). A party's legitimate interest in ensuring that its information be protected should be weighed against the opposing party's interest in obtaining access to the information by its in-house counsel. *Autotech Technologies Ltd. P'ship v. Automationdirect.com, Inc.*, 237 F.R.D. 405, 408 (N.D. Ill. 2006). This balancing requires a "careful and

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