UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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ZHONGSHAN BROAD OCEAN MOTOR CO., LTD.,
BROAD OCEAN MOTOR LLC, and
BROAD OCEAN TECHNOLOGIES, LLC,
Petitioners,

v.

NIDEC MOTOR CORPORATION,
Patent Owner.
_____

Case IPR2014-01121[1]
Patent 7,626,349 B2

_____

Before SALLY C. MEDLEY, JUSTIN T. ARBES,
BENJAMIN D. M. WOOD, JAMES A. TARTAL, and
PATRICK M. BOUCHER, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge*.

ORDER
Motions to Seal
37 C.F.R. §§ 42.5, 42.14

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[1] Case IPR2015-00762 has been joined with this proceeding.

The following motions have been filed by the parties to seal portions of the record.

1. On May 8, 2015, Patent Owner filed a Motion to Seal Patent Owner's Response (Paper 29) and Exhibits 2004, 2005, 2007, 2010, and 2011. Paper 32. Patent Owner asserts that "these papers contain highly confidential and extremely sensitive research, operations, sales, and financial information related to [Patent Owner] that [Patent Owner] has not and would never make publicly available." *Id.* at 2. Patent Owner concurrently filed a redacted public version of the Patent Owner Response (Paper 30). Exhibits 2004 and 2005 are evidence cited by a Declaration of Mark E. Carrier (Ex. 2003). Exhibit 2007 is evidence cited by a Declaration of John Filla (Ex. 2006). Exhibits 2010 and 2011 are respectively a Declaration of Christopher J. Bokhart and curriculum vitae and supporting schedules for Mr. Bokhart's Declaration. Patent Owner filed redacted public versions of Exhibits 2010 and 2011.

2. On August 21, 2015, Petitioner filed a Motion to Seal Petitioner's Reply (Paper 37) and Exhibits 1014 and 1020. Paper 35. Petitioner asserts that "these papers contain confidential and financial information related to a non-party, Goodman Manufacturing, that [Petitioner] has not and would never make publicly available, and that [was] provided to [Petitioner] under a nondisclosure agreement prohibiting their disclosure." *Id.* at 2. Exhibits 1014 and 1020 are respectively Declarations of Ivan T. Hoffman and Ge Hu.

Petitioner concurrently filed redacted public versions of each of Petitioner's Reply (Paper 36) and Exhibits 1014 and 1020.

3. On September 25, 2015, Patent Owner filed a Motion to Seal Patent Owner's Motion to Exclude Evidence (Paper 45). Paper 52. Patent Owner asserts that "this paper contains information the Petitioner deems highly confidential and extremely sensitive operations information." *Id.* at 2. Concurrent with its Motion, Patent Owner filed a redacted public version of the Patent Owner's Motion to Exclude Evidence (Paper 53).

4. On September 25, 2015, Patent Owner filed a Motion to Seal Exhibits 2027, 2034, and 2035. Paper 56. Patent Owner asserts that "these papers contain highly confidential and extremely sensitive research, operations, sales, and financial information related to [Patent Owner] that [Patent Owner] has not and would never make publicly available." *Id.* at 2. Exhibit 2027 is evidence cited by a revised Declaration of Mark E. Carrier (Ex. 2033). Exhibits 2034 and 2035 are respectively a revised Declaration of Christopher J. Bokhart and revised curriculum vitae and supporting schedules for Mr. Bokhart's Declaration. Patent Owner filed redacted public versions of Exhibits 2034 and 2035.

5. On September 25, 2015, Petitioner filed a Motion to Seal Petitioner's Opposition to Patent Owner's Motion to Exclude Evidence (Paper 57). Paper 62. Petitioner asserts that the paper "contains references to confidential and financial information related to a non-party, Goodman Manufacturing, that [Petitioner] has not and would never make publicly

available, and that was provided to [Petitioner] under a nondisclosure agreement prohibiting their disclosure." *Id.* at 1.

6. On October 2, 2015, Patent Owner filed a Motion to Seal Patent Owner's Reply in Support of Its Motion to Exclude Evidence (Paper 63). Paper 64. Patent Owner asserts that "this paper contains information the Petitioner deems highly confidential and extremely sensitive operations information." *Id.* at 2. Patent Owner filed a redacted public version of Patent Owner's Reply in Support of Its Motion to Exclude Evidence as Paper 65.

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, Inc. v. Cuozzo Speed Technologies, LLC*, Case IPR2012-00001 (PTAB Mar. 14, 2013) (Paper 34). In summary, there is a strong public policy for making all information covered in *inter partes* review proceedings open to the public. The standard for granting a motion to seal is "good cause." 37 C.F.R. § 42.54. The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). This includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. 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. *Garmin* at 3.

The parties' motions include requests for entry of a proposed Stipulated Protective Order, filed as Exhibit 2001. Papers 32, 35, 52, 56, 62, 64. The proposed Stipulated Protective Order deviates from the Board's default protective order in that it includes provisions for an "Attorneys' Eyes Only" designation that Patent Owner asserts "mirrors the provision of the protective order entered in related district court litigation and is necessary to protect highly confidential design, development, testing, and financial information, the disclosure of which would cause significant competitive harm." *E.g.*, Paper 32, 3. A redlined version of the proposed Stipulated Protective Order illustrating its differences from the Board's default protective order was filed as Exhibit 2002. The motions further include assertions that the parties have conferred and agreed to the scope and terms of the Stipulated Protective Order. Papers 32, 35, 52, 56, 62, 64.

We are persuaded that good cause exists to enter the Stipulated Protective Order; to seal Papers 29, 37, 45, 57, and 63, and Exhibits 2004, 2005, 2007, and 2027; and to seal the unredacted versions of Exhibits 1014, 1020, 2010, 2011, 2034, and 2035.

Confidential information subject to a protective order ordinarily will become public 45 days after the Board issues a final judgment in a trial. *See* Rules of Practice for Trials, 77 Fed. Reg. 48,612, 48,623 (Aug. 14, 2012). Under 37 C.F.R. § 42.56, after the Board issues a final judgment in a trial, a party may file a motion to expunge confidential information from the record, something the party may wish to do, if at all, before the 45 days have passed.

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