

Filed on behalf of Nidec Motor Corporation

IPR2014-01121

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZHONGSHAN BROAD OCEAN MOTOR CO., LTD.; BROAD OCEAN
MOTOR, LLC; AND BROAD OCEAN TECHNOLOGIES, LLC
Petitioners

v.

NIDEC MOTOR CORPORATION
Patent Owner

Case No. IPR2014-01121
U.S. Patent No. 7,626,349

Before BENJAMIN D.M. WOOD, *Administrative Patent Judge*
JAMES A. TARTAL, *Administrative Patent Judge*
PATRICK M. BOUCHER, *Administrative Patent Judge*

PATENT OWNER'S MOTION TO SEAL

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Nidec Motor Corporation (“Nidec”) hereby moves to seal Exhibits 2027, 2034, and 2035. As detailed below, these papers contain highly confidential and extremely sensitive research, operations, sales, and financial information related to Nidec that Nidec has not and would never make publicly available.

Counsel for Petitioners and Nidec have agreed on the terms of a modified protective order relating to the use of confidential information and Exhibits in this proceeding. Specifically, the Default Protective Order has been amended to accommodate a second “Attorneys’ Eyes Only” provision to protect highly confidential material contained in the relevant Exhibits. Patent Owner has filed previously submitted a Stipulated Protective Order along with a redline showing how the Stipulated Protective Order differs from the Board’s Default Protective Order (*See* Exhibits 2001 and 2002, respectively). Patent Owner requests that the Board enter the Stipulated Protective Order so that the small number of identified Exhibits may be designated “Attorneys’ Eyes Only.”

I. Good Cause Exits for Sealing Confidential Information In This Proceeding.

The Board must find “good cause” exists to enter a protective order and must “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.” *Garmin v. Cuozzo*, IPR2012-00001, Paper 36 (April 5, 2013). *See*

also Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). The Board identifies “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.” 77 Fed. Reg. at 78760 (citing 37 C.F.R. § 42.54).

Beyond the confidential designation available in the Default Protective Order, the “Attorneys’ Eyes Only” provision 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. Patent Owner relies on this detailed financial information to establish objective indications of commercial success to demonstrate the claimed invention is non-obvious.

This type of highly confidential information has been—and will continue to be—designated as Attorneys’ Eyes Only in the co-pending litigation and Petitioner’s foreign counsel and employees have not—and will not—have access to this information under the protective order in that case. Detailed design, development, testing, and financial-related information would typically never be provided to Petitioner’s foreign counsel, Petitioner’s employees, or the public in any context. Disclosure of such highly confidential information would significantly harm Nidec’s competitive position in the market because it would allow a direct

competitor access to some of the most sensitive design, development, testing, and financial information available from Nidec, an unnecessary and dangerous precedent. Indeed, the Supreme Court has noted that adjudicative bodies should not permit their files to serve “as sources of business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

Accordingly, Nidec respectfully requests that the Board enter the Stipulated Protective Order (Exhibit 2001) to protect against the public disclosure of the following information:

Materials to be Sealed as “Confidential” or “Attorneys’ Eyes Only”		
Paper / Exhibit	Contents	Good Cause
Ex. 2027	Declaration of Mark E. Carrier - Simulink Model	<u>Contains Confidential Testing Information</u> – This documents contains non-public information analyzing Nidec products practicing the the invention claimed in the ’349 patent.
Ex. 2034	Revised Declaration of Christopher	<u>Contains Confidential Financial and Market Share Information</u> —This document contains non-public information analyzing

	Bokhart	Nidec sales of products practicing the invention claimed in the '349 patent as well as market share data for Nidec relating to the commercial success of the products incorporating the technology claimed in the '349 patent.
Ex. 2035	Revised CV and Supporting Schedules for Mr. Bokhart's Declaration	<u>Contains Confidential Financial and Market Share Information</u> —This document contains non-public information analyzing Nidec sales of products practicing the invention claimed in the '349 patent as well as market share data for Nidec relating to the commercial success of the products incorporating the technology claimed in the '349 patent.

II. Certification of Non-Publication

On behalf of Nidec, undersigned counsel certifies that the confidential information identified in the foregoing paper and exhibits and sought to be sealed has not, to their knowledge, been published or otherwise made public.

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