

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MAKO SURGICAL CORP.,
Petitioner,

v.

BLUE BELT TECHNOLOGIES, INC. and
CARNEGIE MELLON UNIVERSITY
Exclusive Licensee and Patent Owner.

Case IPR2015-00630
Patent 6,205,411 B1

Before SALLY C. MEDLEY, KEVIN F. TURNER, and
WILLIAM M. FINK, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON MOTION TO SEAL
37 C.F.R. § 42.14 and 42.54

INTRODUCTION

Petitioner filed a motion to seal and an unopposed motion for entry of protective order. Paper 27. The motion to seal seeks to seal the unredacted versions of the deposition of Patent Owner's expert, Dr. Jaramaz (Ex. 1011), Petitioner's Opposition to Patent Owner's Contingent Motion to Amend (Paper 25), and Petitioner's Reply to Patent Owner's Response (Paper 23). Petitioner also filed redacted versions of the sealed documents (Ex. 1012; Papers 24, 26), as well as the Board's Default Protective Order, included as Exhibit A with the motion. For the reasons set forth below, we *grant* the motion.

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. Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; and a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion.

Similarly, 37 C.F.R. § 42.14 provides:

The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

It is, however, only "confidential information" that is protected from disclosure. 35 U.S.C. § 316(a)(7) ("The Director shall prescribe regulations -- . . . providing for protective orders governing the exchange and submission of confidential information"). In that regard, note the *Office Trial Practice Guide*, 77

Fed. Reg. 48756, 48760 (Aug. 14, 2012), which provides:

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.

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Confidential Information: The 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. § 42.54.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. Petitioner bears the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c). We need to know why the information sought to be sealed constitutes confidential information.

With respect to the deposition of Dr. Jaramaz (Ex. 1011), Petitioner alleges that Patent Owner’s counsel, Mr. Buroker, designated certain portions of the transcript to be Blue Belt’s confidential business information, related to the amount of money that was paid to acquire Blue Belt, and the amount of money that Dr. Jaramaz was paid as a result of that acquisition. Mot. 3. Upon our review of the transcript and the redacted version, with redactions limited to pages 4–6 of the redacted version, we agree that the redactions are narrowly tailored to the indicated subjects, and find that there is good cause to redact portions of the original Exhibit 1011.

With respect to redacted versions of Petitioner’s Opposition to Patent Owner’s Contingent Motion to Amend and Petitioner’s Reply to Patent Owner’s Response, Petitioner argues that “the redactions are directed solely to testimony from the deposition of Patent Owner’s expert Dr. Jaramaz, which is itself subject to the present motion to seal.” Mot. 4. Upon our review, we agree with Petitioner’s

assertions. For similar reasons as those discussed above, we find that there is good cause to redact portions of Petitioner's Opposition and Reply.

A motion to seal is required to include a proposed protective order and the Motion details that the parties have stipulated to the default protective order, found at *Office Trial Practice Guide*, 77 Fed. Reg. 48756, 48771 (Aug. 14, 2012). Mot. 4. We enter this default protective order and order that it shall govern the conduct of this proceeding.

ORDER

Accordingly, it is

ORDERED that Exhibit 1011 and Papers 23 and 25 remain under seal in their entirety, with references being made to redacted Exhibit 1012 and Papers 24 and 26;

FURTHER ORDERED that the proposed protective order agreed to by the parties is hereby entered; and

FURTHER ORDERED that this protective order shall govern the conduct of the proceeding unless otherwise modified.

Cased IPR2015-00630
Patent 6,205,411 B1

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