

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

I.M.L. SLU
Petitioner

v.

WAG ACQUISITION, LLC
Patent Owner

U.S. Patent No. 8,122,141

Inter Partes Review Case No. IPR2016-01656

**PATENT OWNER'S MOTION FOR ENTRY OF THE
MODIFIED PROTECTIVE ORDER AND TO
SEAL MOTION FOR ADDITIONAL DISCOVERY**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner, WAG Acquisition, LLC (“WAG”) hereby moves for entry of the Modified Protective Order in the form annexed to Petitioner’s Unopposed Motion for Protective Order and to seal Patent Owner’s Motion for Additional Discovery and Exhibits 2005, 2006 and 2008 attached thereto (the “Discovery Motion”), which contain Petitioner’s confidential business information.

I. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

The Board’s standards for granting motions to seal are discussed in *Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001 (Paper 34 at 4- 5) (Mar. 14, 2013). The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c).

The Discovery Motion contains confidential information requiring that it be designated as “PROTECTIVE ORDER MATERIAL” under the Modified Protective Order as it contains information Petitioner has characterized as highly confidential and that, in particular, discusses and reveals confidential information regarding “business-sensitive details of the Petitioner’s organizational structure, business processes, financing, and corporate and legal operations,” as described in Petitioner’s Unopposed Motion For Entry Of Protective Order. *I.M.L. SLU v. WAG Acquisition, LLC*, IPR2016-01656 (Paper 14 at 1) (May 5, 2017). This information is protectable under the Office Trial and Practice Guide, 77 Fed. Reg. 48760 (Aug. 14, 2012) (stating that the rules identify confidential matter 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.”) and should be sealed from the public.

The sealing of the foregoing is of particular importance because Petitioner claims that it is “a non-public, foreign company, [and] has a strong interest in maintaining the confidentiality of this information [and that it] will be prejudiced unduly if it were compelled to produce its private, internal documents without protection in order to pursue this petition.” *I.M.L. SLU v. WAG Acquisition, LLC*, IPR2016-01656 (Paper 14 at 1) (May 5, 2017). Patent Owner respects Petitioner’s position on this matter.

Conversely, there is no countervailing interest that would counsel against granting the present motion. Further, granting this motion would not prejudice or impact this underlying proceeding. The public’s interest in accessing the information in the Discovery Motion is outweighed by the prejudicial effect and competitive harm of disclosing the above described confidential business information.

II. CERTIFICATION OF NON-PUBLICATION

To the best of Patent Owner’s knowledge, and based on statements by Petitioner about its own information, the confidential information contained in the Discovery Motion has not been made publicly available.

III. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY AND PROPOSED PROTECTIVE ORDER PURSUANT TO 37 C.F.R. § 42.54

Pursuant to 37 C.F.R. § 42.54, counsel for Patent Owner had conferred in good faith with counsel for Petitioner, and the parties previously agreed to entry of the modified version of the Board’s Modified Protective Order in the form annexed to Petitioner’s Unopposed Motion for

Protective Order. The Discovery Motion is submitted subject to the Modified Protective Order and Patent Owner moves to file under seal.

IV. CONCLUSION AND RELIEF REQUESTED

Accordingly, good cause exists to warrant entry of the Modified Protective Order and to seal the Discovery Motion from public disclosure.

Dated: June 12, 2017

Respectfully submitted,

/Ronald Abramson/
Ronald Abramson
(Attorney for Patent Owner)
Reg. No. 34,762
212-822-0163

CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), the undersigned certifies that on June 12, 2017, a complete and entire copy of this Patent Owner's Motion For Entry Of The Modified Protective Order And To Seal Motion for Additional Discovery was provided to the Petitioner by filing through the PTAB E2E System and via email to David.Yohannan@quarles.com, DCpatentdocket@kelleydrye.com, bjacob@kelleydrye.com, and syovits@kelleydrye.com.

Dated: June 12, 2017

/Ronald Abramson/
Ronald Abramson
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