

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DEXCOM, INC.,  
Petitioner,

v.

WAVEFORM TECHNOLOGIES, INC.  
Patent Owner.

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Case IPR2016-01679  
U.S. Patent No. 7,146,202

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**PETITIONER'S UNOPPOSED MOTION TO EXPUNGE  
SEALED DOCUMENTS**

Pursuant to 37 C.F.R. § 42.56, Petitioner Dexcom, Inc. (“Dexcom”) hereby moves for an order expunging protected documents filed under seal in this proceeding, namely Exhibits 1030-32, 2027, 2039, 2041-48, 2051-53, 2055, 2060-61, 2076, and 2082-83, and Papers 28 and 36. Petitioner Dexcom has conferred with Patent Owner Waveform Technologies, Inc. (“Waveform”), and Waveform does not oppose Dexcom’s motion to expunge the confidential information in these exhibits and papers. The documents Petitioner seeks to expunge disclose confidential technical and business information, the majority of which was associated with Waveform’s arguments regarding secondary considerations of non-obviousness. The Patent Trial and Appeal Board (the “Board”), in its Final Written Decision, did not cite to any of this evidence, nor did it discuss secondary considerations. (*See* Paper 53.)

If the Board is not inclined to grant this motion, Dexcom respectfully requests a conference call with the Board to discuss the issues raised in this motion before any information becomes irreversibly public.

**I. Statement of Precise Relief Requested**

Dexcom requests that the confidential information in Exhibits 1030-32, 2027, 2039, 2041-48, 2051-53, 2055, 2060-61, 2076, and 2082-83 and Papers 28 and 36 be expunged from the record. Specifically, Dexcom requests that sealed Exhibits 1030-32, 2039, 2041-48, 2051-52, 2055, 2060-61, 2076, and 2082-83 be expunged

from the record; Dexcom requests further that the sealed versions of Exhibits 2027 and 2053 be expunged from the record; and Dexcom requests further that the sealed versions of Papers 29 and 37 (which are sealed Papers 28 and 36, respectively) be expunged from the record.

## **II. Reasons the Requested Relief Should Be Granted**

Confidential exhibits ordinarily become public after the final judgment in an *inter partes* review. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012). “A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.” Trial Practice Guide, 77 Fed. Reg. at 48,761. The moving party has the burden to establish that it is entitled to the requested relief. 37 C.F.R. § 42.20(c).

“Confidential information” is protected from disclosure by statute. 35 U.S.C. § 316(a)(7). “Confidential information” is defined as “trade secret or other confidential research, development, or commercial information.” 37 C.F.R. § 42.2. The standard for granting a motion to seal information is “for good cause.” 37 C.F.R. § 42.54. For example, where the details of the confidential business or commercial information are unimportant to the merits of the case and the public’s interest in having access to such information is minimal, such information may be sealed for good cause. *See* 37 C.F.R. § 42.54(a)(7); Trial Practice Guide, 77 Fed. Reg. at

48,760. Where the Final Decision does not rely (or only minimally relies) on the confidential information, the Board has granted motions to expunge, finding that there is limited public interest in the confidential information and the record is minimally affected. *See, e.g., Unverferth Mfg. Co. v. J&M Mfg. Co.*, IPR2015-00758, Paper 29 at 2 (P.T.A.B. Sept. 30, 2015) (granting the motion because the final decision did not rely upon the exhibit at issue and “the file and decision remain understandable in the absence of” the exhibit).

Therefore, Petitioner respectfully requests that the Board expunge the sealed versions of Papers 29 and 37 (Papers 28 and 36, respectively), the sealed versions of Exhibits 2027 and 2053, and sealed Exhibits 1030-32, 2039, 2041-48, 2051-52, 2055, 2060-61, 2076, and 2082-83 due to the confidential nature of the technical and business information in these documents. In addition, the information was not relied upon by the Board in the Final Written Decision and the absence of these exhibits and the unredacted versions of the papers will not hinder the public’s understanding of the Board’s Final Written Decision.

**A. Expungement of Exhibits 1030-32, 2039, 2041-48, 2051-52, 2055, 2060-61, 2076, and 2082-83 Is Appropriate**

Where the Board has found no need to rely on documents sought to be protected as sealed in terminating a proceeding, it has expunged those documents upon entry of judgment. *See LG Elecs., Inc. v. Cypress Semiconductor Corp.*, IPR2014-01405, Paper 25, at 2-3 (P.T.A.B. Aug. 6, 2015) (“In entering judgment,

we find it unnecessary to rely on documents the Patent Owner seeks to maintain as sealed, and, therefore, we expunge from the record the sealed documents....”)

Here, the Board issued its Final Written Decision without relying on any of these sealed exhibits Petitioner seeks to expunge. The exhibits relate generally to Dexcom’s confidential technical and business information, the details of which are further explained in Petitioner’s Response to Patent Owner’s Motion to Seal (Paper 32) and Petitioner’s Motion to Seal (Paper 38). Briefly, Exhibits 1030-32, 2039, 2041-48, 2052, 2055, and 2060-61 contain confidential technical information relating to the design, manufacture, function, usability, and testing of products from Dexcom and/or their wire supplier. Exhibits 2051, 2076, and 2082-83 detail secret financial business information including product costs, market evaluations, product revenue and margins, business strategies, user base data, and similar confidential information.

Dexcom’s interests in expunging the confidential information at issue outweigh the public’s interest in retaining it. None of these documents, nor the information they contain, is public knowledge. The parties submitted this information under seal and subject to the stringent requirements of a Protective Order, which the Board found good cause to enforce. And, the thrust of all arguments relating to these exhibits is fully discernable from the redacted versions of all papers citing these exhibits. The public has little, if any, need to know the

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