

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PRECISION PLANTING, LLC and AGCO CORP.,  
Petitioner,

v.

DEERE & COMPANY,  
Patent Owner.

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IPR2019-01044 (Patent 8,813,663 B2)  
IPR2019-01046 (Patent 9,480,199 B2)  
IPR2019-01053 (Patent 9,861,031 B2)  
IPR2019-01055 (Patent 9,699,955 B2)<sup>1</sup>

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Before MICHAEL W. KIM, BARRY L. GROSSMAN,  
JAMES A. TARTAL, and TIMOTHY J. GOODSON,  
*Administrative Patent Judges.*<sup>2</sup>

GOODSON, *Administrative Patent Judge.*

ORDER

*Granting Patent Owner's and Petitioner's Unopposed Motions to Seal  
37 C.F.R. §§ 42.14, 42.54*

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<sup>1</sup> We exercise our discretion to issue one order to be filed in each proceeding. The parties may use this style heading only if the paper includes a statement certifying that the identical paper is being filed in each proceeding listed in the caption.

<sup>2</sup> This listing of Administrative Patent Judges does not reflect an expanded panel under SOP 1 § III.M. This order addresses multiple proceedings that collectively involve more than three Administrative Patent Judges.

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## I. INTRODUCTION

In the above-captioned cases, Patent Owner filed a Motion to Exclude Evidence, including a confidential version of the motion (Paper 71) and a public, redacted version of the motion (Paper 72).<sup>3</sup> Patent Owner filed an accompanying Unopposed Motion to Seal (Paper 70) the confidential version of its Motion to Exclude Evidence. Subsequently, Petitioner filed an Opposition to Patent Owner's Motion to Exclude Evidence (Paper 77, confidential version; Paper 75, public, redacted version), along with an Unopposed Motion to Seal (Paper 78) the confidential version of its Opposition. Patent Owner then filed a Reply to Petitioner's Opposition to the Motion to Exclude Evidence (Paper 86, confidential version; Paper 87, public, redacted version), accompanied by an Unopposed Motion to Seal (Paper 85) the confidential version of its Reply.

For the reasons discussed below, Patent Owner's and Petitioner's motions to seal are *granted*.

## II. DISCUSSION

The record for an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. There is a strong public policy that favors making information filed in *inter partes* review proceedings open to the public. See *Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001, Paper 34 (PTAB March 14, 2013) (discussing the standards

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<sup>3</sup> We cite to the papers and exhibits filed in IPR2019-01044. Similar papers and exhibits were filed in each of the above-captioned cases.

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of the Board applied to motions to seal). Unlike in district court, where a party routinely will determine whether a document is produced under the terms of a district court protective order, in an *inter partes* review, “the default rule is that all papers . . . are open and available for access by the public.” *See Garmin* at 2. 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). That includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. *See Garmin* at 3. Further, redactions to documents should be limited to the minimum amount necessary to protect confidential information, and the thrust of the underlying argument or evidence must be clearly discernible from the redacted versions. *See Scheduling Order*, Paper 18, 2–3; *see also Consolidated Office Patent Trial Practice Guide* (“Consolidated Practice Guide”), November 2019, at 91–92.<sup>4</sup>

In their motions to seal, Patent Owner and Petitioner assert there is good cause to seal their briefs related to Patent Owner’s Motion to Exclude Evidence, because the briefs discuss exhibits previously filed under seal. Paper 70, 1; Paper 78, 1–2; Paper 85, 1. Specifically, the parties contend the briefs discuss Exhibits 1049, 1050, 1052, and 1054 (*id.*), for which we determined there was good cause to enter under seal (Paper 60, 4–5; Paper 74, 3–4). Upon reviewing the confidential versions of the parties’ briefs on Patent Owner’s Motion to Exclude Evidence (Papers 71, 77, and 86), we agree that these briefs refer to confidential information contained in sealed

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<sup>4</sup> Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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Exhibits 1049, 1050, 1052, and 1054, and thus, there is good cause to seal the confidential briefs. Further, the parties have filed public, redacted versions of their briefs (Papers 72, 75, and 87) that appear to be tailored narrowly to redact only confidential information. Accordingly, we grant Patent Owner's and Petitioner's motions to seal the confidential versions of their briefs on Patent Owner's Motion to Exclude Evidence (Papers 71, 77, and 86). All documents entitled to confidentiality in the above-identified proceedings are subject to the Board's Default Protective Order (Ex. 3001), which was previously entered (Paper 60, 2–3).

We remind the parties of the public's interest in maintaining a complete and understandable file history, and thus, that there is an expectation that confidential information relied upon in a subsequent decision will be made public. *See Consolidated Practice Guide* at 21–22. In addition, confidential information that is subject to a protective order ordinarily becomes public 45 days after denial of a petition to institute or 45 days after final judgment in a trial. *Id.* A party seeking to maintain the confidentiality of the information may file a motion to expunge the information from the record prior to the information becoming public. 37 C.F.R. § 42.56.

### III. ORDER

Accordingly, it is:

ORDERED that Patent Owner's Unopposed Motions to Seal the confidential version of its Motion to Exclude Evidence and its Reply to Petitioner's Opposition to the Motion to Exclude Evidence are *granted*; and

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FURTHER ORDERED that Petitioner's Unopposed Motion to Seal the confidential version of its Opposition to Patent Owner's Motion to Exclude Evidence is *granted*.

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