

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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YITA LLC,  
Petitioner,

v.

MACNEIL IP LLC,  
Patent Owner.

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Case IPR2020-01139  
Patent No. 8,382,186

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**PATENT OWNER'S MOTION TO SEAL  
AND FOR ENTRY OF A PROTECTIVE ORDER  
PURSUANT TO 37 C.F.R. § 42.54**

Patent Owner MacNeil IP LLC (“Patent Owner”) hereby moves for entry of the Protective Order appended below as Appendix A and further moves to seal its Patent Owner Response and Exhibit 2042, which are being filed concurrently with this motion. Patent Owner met and conferred with Petitioner Yita LLC (“Petitioner”) regarding this motion. Petitioner indicated that it opposes Patent Owner’s motion for entry of the Protective Order at Appendix A because it allows for an ATTORNEYS’ EYES ONLY designation and that it may oppose Patent Owner’s motion to seal.

**I. MOTION FOR ENTRY OF A PROTECTIVE ORDER**

Patent Owner’s proposed Protective Order is included below as Appendix A, and a redline showing changes from the Board’s default protective order is included as Appendix B. The Protective Order deviates from the Board’s default protective order in four respects, discussed below.

**A. Limits on persons to whom material may be disclosed**

Patent Owner has modified the list of individuals who are permitted access to confidential information under Section 2 of the Board’s default protective order.

First, Patent Owner has modified the list to prohibit the parties or employees of parties to the proceeding from accessing confidential information designated “PROTECTIVE ORDER MATERIAL” except for in-house counsel for a party who either have responsibility for making decisions dealing directly with the

proceeding or who are assisting outside counsel in the proceeding. *See* Section 2. Support personnel for in-house counsel would be excluded from receiving access to such confidential information.

Patent Owner submits that provisions prohibiting the parties or employees of parties to access the opposing party's confidential information and restricting access to in-house counsel meeting the above-described criteria are necessary in this proceeding. Confidential documents may include competitively-sensitive business information. Providing the parties or employees of parties access to confidential materials could cause harm to the producing party, as could providing unrestricted access to in-house counsel.

Second, Patent Owner has modified the list to prohibit parties and employees of parties, including in-house counsel of parties, from accessing confidential information designated "PROTECTIVE ORDER MATERIAL – ATTORNEYS' EYES ONLY." *See* Section 3. Support personnel for in-house counsel would also be excluded from receiving access to such confidential information.

Patent Owner submits that provisions further prohibiting in-house counsel of parties from accessing documents designated "PROTECTIVE ORDER MATERIAL – ATTORNEYS' EYES ONLY" are necessary. The protective order issued by the district court in the parallel litigation between Patent Owner and a real-party-in-interest in this proceeding, Jinrong (SH) Automotive Accessory

Development Co. Ltd., (“District Court Protective Order”) likewise prohibits all party representatives, including in-house counsel of parties, from accessing certain documents designated “OUTSIDE COUNSEL ATTORNEYS’ EYES ONLY.” The District Court Protective Order is appended to this motion as Appendix C. The parties to this proceeding are direct competitors, and allowing any party representative to view potentially confidential business information could be harmful to the other party’s business interests.

The Board’s rules expressly contemplate the use of “additional tiers or categories of confidential information,” including the “Attorneys’ Eyes Only” designation proposed here. Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019 at 115. Indeed, the Board regularly enters protective orders including an Attorneys’ Eyes Only designation. For example, in *Quest USA Corp. v. PopSockets LLC*, IPR2018-00497, Paper 59 (P.T.A.B. Aug. 12, 2019), the Board considered an analogous situation to the one at issue here. In that case, the patent owner moved for entry of a protective order that included a “second level of confidentiality designation, ‘HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY’” and moved to seal patent owner’s “sales data by year from 2014 to 2018” as well as declarations and the patent owner response addressing the same. *Id.*, 87-88. The petitioner in that case opposed both motions. *Id.*, 87. The Board found good cause existed to protect the patent owner’s

confidential information, entered the modified protective order, and granted the patent owner's motion to seal. *Id.*, 90.

Patent Owner submits that the "PROTECTIVE ORDER MATERIAL – ATTORNEYS' EYES ONLY" designation is not overly inclusive such that the parties are encouraged to categorize all or most documents as such. Patent Owner contemplates that the parties will only use this designation for documents that would qualify for the designation in the district court proceeding.

These modifications do not affect access to confidential information for employees and representatives of the Patent and Trademark Office who have a need for access to the confidential information.

**B. Application of limits only to confidential information marked "PROTECTIVE ORDER MATERIAL" or "PROTECTIVE ORDER MATERIAL – ATTORNEYS' EYES ONLY"**

Patent Owner also has modified Section 1 and the first sentence of Section 2 of the Board's default protective order to expressly clarify that the limits in the Board's protective order apply only to confidential information that is marked "PROTECTIVE ORDER MATERIAL" or "PROTECTIVE ORDER MATERIAL – ATTORNEYS' EYES ONLY" in connection with this proceeding.

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