

From: Mark Walters <walters@lowegrahamjones.com>
Sent: Monday, May 3, 2021 5:52 PM
To: chad.walters@bakerbotts.com; clarke.stavinoha@BakerBotts.com; Trey Powers; Jason Fitzsimmons; Steve Merrill; John Bamert; PTAB Account
Cc: david.wille@bakerbotts.com; jperkins@perkinsip.com; PTAB Account; PTAB Account
Subject: RE: IPR2020-01139, -01142 - Protective Order & Motion to Seal

EXTERNAL EMAIL: Use caution before clicking links or attachments.

Thanks Chad. I can confirm that we will oppose the motion for the modified PO and that we will maintain any information designated as AEO in the PTAB proceeding according to the terms of the proposed modified PO until the PTAB rules on your motion. Let me know if you have any questions. Mark.

From: chad.walters@bakerbotts.com <chad.walters@bakerbotts.com>
Sent: Monday, May 03, 2021 12:42 PM
To: Mark Walters <walters@lowegrahamjones.com>; clarke.stavinoha@BakerBotts.com; tpowers-PTAB@sternekessler.com; jfitzsimmons-PTAB@sternekessler.com; smerrill-PTAB@sternekessler.com; John Bamert <bamert@lowegrahamjones.com>; PTAB@sternekessler.com
Cc: david.wille@bakerbotts.com; jperkins@perkinsip.com
Subject: RE: IPR2020-01139, -01142 - Protective Order & Motion to Seal

Mark,

An AEO designation is appropriate here because Patent Owner intends to file confidential, competitively-sensitive business information. Specifically, Patent Owner intends to file information about Patent Owner's sales and gross revenue—information that is not otherwise available to the public – and information concerning settlement agreements where Patent Owner may have a confidentiality obligation to a third party. Confidential commercial information such as this is the type of information to be protected pursuant to 37 C.F.R. § 42.54(a)(7). Providing Petitioner or employees of Petitioner, including in-house counsel, access to Patent Owner's confidential materials could cause harm to Patent Owner. Thus, an AEO designation is warranted here and consistent with the district court protective order permitting financial information to be designated "Outside Counsel Attorneys Eyes Only."

If Petitioner is unwilling to agree to an AEO designation for the PTAB proceeding, Patent Owner will proceed with filing a motion for entry of the modified protective order we provided.

Please confirm that you will keep the designated information as outside AEO (under the terms of our proposed protective order) until the Board has resolved this issue.

Chad

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From: Mark Walters <walters@lowegrahamjones.com>

Sent: Monday, May 3, 2021 11:00 AM

To: Walters, Chad <chad.walters@bakerbotts.com>; Stavinoha, Clarke <clarke.stavinoha@BakerBotts.com>; tpowers-PTAB@sternekessler.com; jfitzsimmons-PTAB@sternekessler.com; smerrill-PTAB@sternekessler.com; John Bamert <bamert@lowegrahamjones.com>; PTAB@sternekessler.com

Cc: Wille, David <david.wille@bakerbotts.com>; jperkins@perkinsip.com

Subject: RE: IPR2020-01139, -01142 - Protective Order & Motion to Seal

[EXTERNAL EMAIL]

Hi Chad:

We believe the default protective order is adequate before the PTAB. Further, generally, information Patent Owner relies on for alleged patentability should be accessible to the public as part of the quid pro quo of the patent system. So, we may oppose any motion to seal. Additionally, setting aside what we did in the district court, can you explain an AEO level of protection is appropriate here?

Thanks. Mark.

From: chad.walters@bakerbotts.com <chad.walters@bakerbotts.com>

Sent: Saturday, May 01, 2021 9:55 AM

To: Mark Walters <walters@lowegrahamjones.com>; clarke.stavinoha@BakerBotts.com; tpowers-PTAB@sternekessler.com; jfitzsimmons-PTAB@sternekessler.com; smerrill-PTAB@sternekessler.com; John Bamert <bamert@lowegrahamjones.com>; PTAB@sternekessler.com

Cc: david.wille@bakerbotts.com; jperkins@perkinsip.com

Subject: RE: IPR2020-01139, -01142 - Protective Order & Motion to Seal

Mark,

The type of information we would be designating as AEO is the same type of information Petitioner has agreed is AEO in the district court.

What is the basis for Petitioner not agreeing to an AEO designation in the PTAB?

Chad

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From: Mark Walters <walters@lowegrahamjones.com>
Sent: Friday, April 30, 2021 6:44 PM
To: Stavinoha, Clarke <clarke.stavinoha@BakerBotts.com>; tpowers-PTAB@sternekessler.com; jfitzsimmons-PTAB@sternekessler.com; smerrill-PTAB@sternekessler.com; John Bamert <bamert@lowegrahamjones.com>; PTAB@sternekessler.com
Cc: Wille, David <david.wille@bakerbotts.com>; Walters, Chad <chad.walters@bakerbotts.com>; jperkins@perkinsip.com
Subject: RE: IPR2020-01139, -01142 - Protective Order & Motion to Seal

[EXTERNAL EMAIL]

Thank you Clarke. The Petitioner cannot agree to an AEO level designation for purposes of the PTAB protective order. If you would like to discuss, let me know. Mark.

From: Stavinoha, Clarke <clarke.stavinoha@BakerBotts.com>
Sent: Friday, April 30, 2021 12:41 PM
To: Mark Walters <walters@lowegrahamjones.com>; tpowers-PTAB@sternekessler.com; jfitzsimmons-PTAB@sternekessler.com; smerrill-PTAB@sternekessler.com; John Bamert <bamert@lowegrahamjones.com>; PTAB@sternekessler.com
Cc: Wille, David <david.wille@bakerbotts.com>; Walters, Chad <chad.walters@bakerbotts.com>; jperkins@perkinsip.com
Subject: IPR2020-01139, -01142 - Protective Order & Motion to Seal

Counsel,

Patent Owner intends to file confidential business information relating to its product sales and gross revenues with its Patent Owner Responses. Accordingly, we plan to file a motion to seal and for entry of a protective order concurrent with our responses.

I've attached our proposed modifications to the Board's default protective order. We attempted to align the designations with those in the district court protective order while minimizing revisions to the default order as the Board typically prefers. Please let us know if these are acceptable to Petitioner.

Also, please confirm that Petitioner will not oppose our motion to seal. Once we have agreement on the terms of the protective order, we would be happy to send you a draft of that motion ahead of filing.

Thanks,
Clarke

Clarke Stavinoha

Senior Associate

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