UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

YITA LLC,
Petitioner,

v.

MACNEIL IP LLC,
Patent Owner.

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

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

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Patent Owner ("PO") seeks to seal a limited amount of confidential, highly sensitive commercial information evidencing the commercial success of PO's claimed inventions. This confidential information—a mere two columns of a table in the declaration of Mr. Ryan Granger (EX2042, ¶73) and four words in the Patent Owner Response (Paper 28, 77; Paper 29, 77)—is precisely the type of information to be protected from disclosure pursuant to 37 C.F.R. § 42.54(a)(7). Both parties have agreed in the related district court litigation that confidential commercial information such as this merits heightened protection under an Attorneys' Eyes Only ("AEO") designation. Paper 27, Appendix C, § 2.2. PO's modified protective order ensures that this information is afforded the same protection in this proceeding.

I. Petitioner's opposition mischaracterizes the scope of the protective order and conceals material information from the Board.

Petitioner wrongly contends that "MacNeil's restrictions would deny access to all individuals at Petitioner Yita, including in-house counsel[.]" Paper 32 ("Opposition"), 1. Indeed, Petitioner's opposition is premised on the alleged inability of its in-house counsel to access PO's confidential information. The Board should reject Petitioner's argument for at least two reasons. ***First***, the proposed protective order ***does not preclude*** in-house counsel from seeing all confidential information that may be filed. Only access to information designated "Protective Order Material – Attorneys' Eyes Only" is prohibited, consistent with the protections afforded by the district court. Paper 27, Appendix A, §§ 2-3.

Second, Petitioner's belated arguments concerning in-house counsel are a distraction. To the best of PO's knowledge, based on dealings with Petitioner here and in the related litigation, Petitioner has no in-house counsel. Petitioner never raised in-house counsel's access during the parties' discussions of the protective order. EX1038. Rather, Petitioner flatly refused to agree to any AEO designation. *Id.* When Petitioner first raised this issue in its opposition, PO inquired about Petitioner's in-house counsel. EX2139, 1. Petitioner's counsel deflected and refused to confirm whether it even employs in-house counsel. *Id.* Because Petitioner appears to have no in-house counsel, permitting Petitioner's representatives of record to access AEO material, as provided in the proposed order, is sufficient.

II. Petitioner's employees need not access confidential information.

The Board's rules require that an opposition to a motion for entry of a protective order "state with particularity the grounds for modifying the proposed Protective Order" and that "[t]he party seeking the modification shall have the burden of proving that modifications are necessary." PTAB Consolidated Trial Practice Guide November 2019 ("CTPG"), 114. Petitioner argues that "MacNeil should not be able to argue that certain evidence demonstrates patentability on the one hand, while simultaneously arguing that the very same evidence cannot be seen by Yita on the other." Opposition, 1. But Petitioner fails to explain why allowing Petitioner's employees to access PO's confidential information is necessary, or how

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