

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 UNOPPOSED MOTION TO SEAL
PURSUANT TO 37 C.F.R. § 42.54**

In its recent Order, the Board requested that Patent Owner address whether good cause exists to seal its Patent Owner Response and Exhibit 2042. *See* Paper 48 at 5. Patent Owner MacNeil IP LLC (“Patent Owner”) accordingly moves to seal its Patent Owner Response and Exhibit 2042. Patent Owner addresses each element of the *Argentum* standard below and requests that the Board find good cause to maintain its Patent Owner Response and Exhibit 2042 under seal. As indicated in the Board’s Order, Petitioner does not oppose the motion to seal. *Id.*

I. The designated information, which is held in confidence and not shared with the public, should be protected under the default protective order.

Patent Owner’s commercial information, including the number of floor trays sold and annual gross revenue, is confidential to Patent Owner, a private company. EX2140. Patent Owner compiled this information from Patent Owner’s internal sales, marketing, and financial documentation. *Compare* EX2042, ¶73, with *Permobil Inc. v. Pride Mobility Prod. Corp.*, IPR2013-00411, Paper 40 at 2 (P.T.A.B. July 2, 2014) (recognizing confidentiality of non-public “company . . . marketing data”); IPR2013-00411, Paper 25 at 2 (P.T.A.B. May 20, 2014) (identifying this information as “internal company procedures on market data” and “company-confidential marketing information”). That Patent Owner does not attach documents from which the information was derived is irrelevant. The redacted information in Exhibit 2042 and the Patent Owner Response is

confidential regardless of the document in which the information appears. Patent Owner does not publish this information, and it cannot be derived from public sources. EX2042, ¶¶79-80 (explaining Patent Owner’s tray sales to OEMs, who sell the trays under Patent Owner’s marks or under their own marks). On behalf of Patent Owner, undersigned counsel certifies the confidential information sought to be sealed has not, to their knowledge, been published or otherwise made public.

The Board has consistently sealed product sales and internal financial documents. *Quest USA Corp. v. PopSockets LLC*, IPR2018-00497, Paper 59 at 87-90 (P.T.A.B. Aug. 12, 2019) (sealing “sales data by year from 2014 to 2018”); *Endo Pharm, Inc. v. Depomed, Inc.*, IPR2014-00656, Paper 59 at 2 (P.T.A.B. June 3, 2015) (sealing “product sales”); *Cisco Sys., Inc. v. Crossroads Sys., Inc.*, IPR2014-01544, Paper 50 at 29 (P.T.A.B. Jan. 29, 2016) (sealing “confidential sales and licensing information”). The Board’s default protective order permits for protection of sensitive commercial information. Consolidated Trial Practice Guide, 19 (Nov. 2019) (defining “confidential information” to match Fed. R. Civ. P. 26(c)(1)(G), including “other . . . commercial information”); *Arista Networks, Inc. v. Cisco Sys., Inc.*, IPR2016-00309, Paper 51 at 2-3 (P.T.A.B. May 8, 2017) (accepting movant’s “representations” regarding “highly sensitive financial” information). And

petitioner's real party in interest similarly designated annual gross revenue as ATTORNEY EYES ONLY in the parties' parallel district court proceedings.

II. Patent Owner would be harmed by public disclosure.

Public disclosure of this information would harm Patent Owner's competitive position in the automotive accessory market. Patent Owner would be harmed by competitor insight into Patent Owner's pricing and marketing decisions. For example, Patent Owner's historical price per floor tray set can be determined from the redacted information. EX2042, ¶73. Patent Owner would be harmed by insight into Patent Owner's market share and the relevant market size, motivating copying and infringement of Patent Owner's intellectual property, such as that leading to this proceeding. Public disclosure would also reveal Patent Owner's corporate valuation and financial resources, causing competitive harm in negotiations relating to mergers & acquisitions, supplier agreements, and other commercial matters. *See Athena Automation Ltd. v. Husky Injection Molding Sys, Ltd.*, IPR2013-00167, Paper 32 at 2-3 (sealing information relating to the movant's "valuation").

III. Patent Owner genuinely relies on the designated information.

Patent Owner relies on the redacted information to establish commercial success of products embodying the claimed invention. Sales demonstrating market share of those products are probative evidence in establishing commercial success. *Cisco Systems, Inc. v. Crossroad Systems, Inc.*, IPR2014-01463, Paper 49 at 35

(P.T.A.B. Mar. 16, 2016) (“An important component of the commercial success inquiry is determining market share”); *Fox Factory, Inc. v. SRAM, LLC*, IPR2016-01876, Paper 59 at 35-36 (P.T.A.B. Apr. 2, 2018). Patent Owner’s genuine reliance on the information sought to be sealed only compounds the harm from public disclosure, which would force Patent Owner to abandon significant evidence of non-obviousness or expose sensitive business information.

IV. Patent Owner has performed only limited redactions.

Cognizant of the public interest in a complete and understandable record, Patent Owner seeks to redact only limited information: (1) the annual quantity of floor trays sold from 2004 to 2020, and (2) corresponding gross revenue. In Exhibit 2042, Patent Owner redacted only the actual numbers specifying the annual quantity of floor trays sold and corresponding gross revenue, not the table headings that explain what those numbers mean. EX2042, ¶73. In Patent Owner’s Response, Patent Owner redacted only two numbers. *See Axis Communications, Inc. v. Trover Group, Inc.* IPR2015-00432, Paper 14, at 2 (P.T.A.B. June 12, 2015) (granting motion to seal patent owner’s response containing only two minor redactions); IPR2015-00432, Paper 7, at 48-49 (demonstrating that the two pieces of redacted information—sales quantities and corresponding revenues—are nearly identical to the information Patent Owner seeks to seal here).

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