

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TENNANT COMPANY,  
Petitioner,

v.

OXYGENATOR WATER TECHNOLOGIES, INC.,  
Patent Owner.

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IPR2021-00625  
Patent RE 45,415 E

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Before KRISTINA M. KALAN, CHRISTOPHER M. KAISER, and  
WESLEY B. DERRICK, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

ORDER  
Patent Owner's Unopposed Motion for Entry of a Protective Order  
*37 C.F.R. § 42.54*

On September 22, 2021, Patent Owner filed an unopposed motion for a protective order in the above-captioned case. Paper 16 (“PO Mot.”). In its motion, Patent Owner requests that we enter a protective order that differs from the Board’s default protective order, which is set forth in the Consolidated Trial Practice Guide, Appendix B (84 Fed. Reg. 64,280 (Nov. 21, 2019)), *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“CTPG”). PO Mot. 1. Patent Owner represents that the parties agree to entry of this modified protective order. *Id.*

Patent Owner requests that we modify the Board’s default protective order so that Section 2(B) clarifies “that employees of the law firms of attorneys of record are allowed access to confidential information.” *Id.* Patent Owner represents that Patent Owner submitted a clean version of the proposed protective order, as well as a version indicating the differences between the proposed protective order and the Board’s default protective order. Exs. 2113, 2114. Patent Owner avers: “Good cause exists for the Board to enter the Proposed Protective Order to protect the parties’ confidential information and promote efficiency in resolution of the dispute.” PO Mot. 1.

Our rules concerning protective orders state: “A party may file a motion to seal where the motion to seal contains a proposed protective order . . . .” 37 C.F.R. § 42.54(a). Our rules require a motion to seal be accompanied by the document(s) or thing(s) proposed to be sealed. *See* 37 C.F.R. § 42.14 (“A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed.”).

We note that no motions to seal or confidential documents have been filed in these proceedings to date. We typically defer consideration and entry of a protective order until the filing of a motion to seal. Our rules, however, also allow for the Board, for good cause, to “issue an order to protect a party or person from disclosing confidential information.” 37 C.F.R. § 42.54(a). Because the parties have agreed on the terms of the modified protective order, and because the parties intend to protect “confidential information contained in documents, discovery or testimony adduced, exchanged, or filed with the Board” (CTPG 107), we determine that good cause exists to grant Patent Owner’s unopposed Motion for Entry of a Protective Order.

The parties may, in the future, file a motion to seal concurrent with any documents or things proposed to be sealed, to which the protective order entered by this Order shall apply.

It is:

ORDERED that the unopposed Motion for Entry of a Protective Order is *granted*, and that Patent Owner’s proposed protective order (Ex. 2113) is placed into effect.

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