

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EVE ENERGY CO., LTD.,
Petitioner,

v.

VARTA MICROBATTERY GMBH,
Patent Owner.

IPR2022-01484
Patent 9,153,835 B2

Before CHRISTOPHER L. CRUMBLEY, JON B. TORNQUIST, and
BRIAN D. RANGE, *Administrative Patent Judges*.

RANGE, *Administrative Patent Judge*.

ORDER

Granting Petitioner's and Patent Owner's Motions to Seal
and Entering the Default Protective Order
37 C.F.R. §§ 42.14, 42.54(a)

INTRODUCTION

The parties have filed various motions to seal pre-institution papers and exhibits. Patent Owner first filed a Motion to Seal requesting entry of the Board’s Default Protective Order, and moving to seal the Preliminary Response (Paper 7) and Exhibits 2025 and 2026. Paper 6, “PO First Mot.” Petitioner then filed a Motion to Seal as to its Preliminary Reply (Paper 12) and Exhibit 1044. Paper 11, “Pet. Mot.” Finally, Patent Owner filed a Second Motion to Seal as to its Preliminary Sur-Reply (Paper 15). Paper 14. For the reasons set forth below, these motions are *granted*.

DEFAULT PROTECTIVE ORDER

The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information. 37 C.F.R. § 42.54(a) (2022). A protective order is not entered by default but must be proposed by one or more parties and must be approved and entered by the Board. Patent Trial and Appeal Board Consolidated Trial Practice Guide 19–20, 107 (Nov. 2019), <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“Trial Practice Guide”). The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a default protective order. *See id.* at 19–20, 107–22 (Appendix B).

In its first Motion, Patent Owner requested that we enter the default protective order in Appendix B of the Trial Practice Guide. PO First Mot. 1. Petitioner agrees. Pet. Mot. 1. Given the agreement of the parties, we enter the default protective order as set forth in the Trial Practice Guide, without modification.

EXHIBITS 2025 AND 2026

Under 37 C.F.R. § 42.14, by default all papers filed in *inter partes* review proceedings are available to the public. Only “confidential information” is subject to protection against public disclosure. 35 U.S.C. § 316(a)(7) (2018); 37 C.F.R. § 42.54. The Board also observes a strong policy in favor of making all information filed in *inter partes* review proceedings open to the public. See *Argentum Pharms. LLC v. Alcon Rsch., Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

In an *inter partes* review, a moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). In the context of motions to seal, the standard for granting the requested relief is “good cause.” 37 C.F.R. § 42.54(a). A party must make a sufficient showing that: (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record. *Argentum*, Paper 27 at 3–4; see also *Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB Apr. 6, 2015) (requiring a showing that information has not been “excessively redacted”).

Patent Owner seeks to maintain the entirety of Exhibits 2025 and 2026 under seal. First PO Mot. 1. According to Patent Owner, the documents contain material that Petitioner considers confidential and were produced with confidential markings. *Id.* Exhibit 2025 is alleged to be a purchase agreement involving Petitioner, and contains financial and commercially sensitive information. *Id.* Exhibit 2026 is correspondence

between Petitioner and Patent Owner that was intended to be confidential between the parties. *Id.* at 1–2. Petitioner did not oppose Patent Owner’s motion.

Upon review, we accept Patent Owner’s uncontested characterizations and determine that the documents appear to contain confidential information. Furthermore, due to the extent of the confidential information contained, it does not appear feasible to enter a redacted, public version of these documents. We, therefore, determine there is good cause to grant Patent Owner’s motion to seal Exhibits 2025 and 2026 in their entirety.

EXHIBIT 1044

Petitioner seeks to maintain portions of Exhibit 1044 under seal, and provided a public, redacted version of the exhibit indicating the portions deemed confidential. Pet. Mot. 2. According to Petitioner, the exhibit is a declaration discussing Exhibit 2025 and providing details about the purchase agreement. *Id.* Petitioner states that it has attempted to redact from the public version of Exhibit 1044 only those items of information deemed confidential or subject to a confidentiality designation in district court. *Id.* Patent Owner did not oppose Petitioner’s motion.

Upon review, we accept Petitioner’s uncontested characterizations and determine that the declaration appears to contain confidential information. Petitioner’s proposed redactions appear narrowly tailored to the information alleged to be confidential. We, therefore, determine there is good cause to grant Patent Owner’s motion to seal the unredacted version of Exhibit 1044.

PRELIMINARY PAPERS

The parties move to seal portions of the Preliminary Response, the Preliminary Reply, and the Preliminary Sur-Reply. First PO Mot. 2; Pet. Mot. 2; Second PO Mot. 2. Specifically, the parties contend that these portions of the papers discuss confidential information contained in Exhibits 1044, 2025, and 2026. *Id.* The parties have filed public, redacted versions of the paper, and those redactions appear narrowly tailored to only the portions discussing the three exhibits. Because we have found sufficient good cause exists to seal the underlying exhibits, we also determine that the parties have articulated sufficient good cause to seal the portions of the papers discussing those exhibits.

ORDER

In light of the foregoing, it is hereby:

ORDERED that the Board's default protective order set forth in Appendix B of the Trial Practice Guide is entered in this proceeding, and the parties shall comply with its provisions in their entirety;

FURTHER ORDERED that Patent Owner's Motion to Seal (Paper 6) is *granted*;

FURTHER ORDERED that Petitioner's Motion to Seal (Paper 11) is *granted*; and

FURTHER ORDERED that Patent Owner's Second Motion to Seal (Paper 14) is *granted*.

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