

*Inter Partes* Review 2016-00166  
U.S. Patent No. 6,842,502

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VARIAN MEDICAL SYSTEMS, INC.,  
Petitioner,

v.

WILLIAM BEAUMONT HOSPITAL,  
Patent Owner

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Case 2016-00166  
U.S. Patent No. 6,842,502

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**PATENT OWNER'S MOTION TO SEAL**

Mail Stop PATENT BOARD  
Patent Trial and Appeal Board  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dated: September 30, 2016

Filed by:

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*Counsel for Petitioner Elekta Inc.*

Pursuant to 37 C.F.R. §§ 42.14 and 42.54(a), Patent Owner moves to seal certain exhibits and papers submitted in this proceeding. Because good cause is shown, Patent Owner respectfully requests that these exhibits be sealed.

The parties have met and conferred on this motion, and Petitioner has reserved its right to respond to this motion after Patent Owner files the exhibits and Petitioner has an opportunity to review the exhibits.

### **THE PARTIES' STIPULATED STANDING PROTECTIVE ORDER**

The parties have met and conferred and agreed to the terms of the Standing Protective Order set forth herein at Exhibit 1. This Standing Protective Order is based on the Board's default protective order, with the parties' proposed changes highlighted in red. Patent Owner therefore respectfully requests entry of the parties' proposed Standing Protective Order in this proceeding.

### **EX. 2011**

In support of the Patent Owner Response, Patent Owner has relied on the cross-examination testimony of Petitioner's expert, Dr. Balter. Dr. Balter and Petitioner designated certain portions of that testimony as highly confidential and Protective Order Material. Patent Owner does not object to that designation as the relevant testimony relates to nonpublic financial information. In accordance with the Standing Protective Order, Patent Owner has filed a redacted public version of Ex. 2011 as well as a confidential version of Ex. 2011. Patent Owner therefore

respectfully submits that there is good cause for sealing the confidential information designated in Ex. 2011. *See* 37 C.F.R. § 42.54(a).

**EX. 2048**

Ex. 2048 is a declaration from an employee of Elekta Ltd. This declaration is being offered to support Patent Owner's arguments regarding secondary considerations of nonobviousness. Ex. 2048 contains highly confidential, nonpublic information relating to the sale of certain linear accelerators manufactured and installed by Elekta. This information is competitive in nature and would irreparably harm Elekta if shared with Petitioner's internal employees. In accordance with the Standing Protective Order, Patent Owner has filed a redacted public version of Ex. 2048 as well as a confidential version of Ex. 2011. Patent Owner therefore respectfully submits that there is good cause for sealing the confidential information designated in Ex. 2048. *See* 37 C.F.R. § 42.54(a).

**EX. 2083**

Ex. 2083 is a declaration from an employee of William Beaumont Hospital. This declaration is being offered to support Patent Owner's arguments regarding secondary consideration of nonobviousness. Ex. 2083 contains highly confidential, nonpublic information relating to licensing revenues generated by the patent-in-suit. This information is competitive in nature and would irreparably harm Patent Owner and Elekta if shared with Petitioner's internal employees. In

accordance with the Standing Protective Order, Patent Owner has filed a redacted public version of Ex. 2083 as well as a confidential version of Ex. 2083. Patent Owner therefore respectfully submits that there is good cause for sealing the confidential information designated in Ex. 2083. *See* 37 C.F.R. § 42.54(a).

#### **EX. 2080**

Ex. 2080 is a declaration from Patent Owner's expert providing testimony in support of Patent Owner's Response. This declaration relies on the confidential information provided in Ex. 2048 and Ex. 2083. In accordance with the Standing Protective Order, Patent Owner has filed a redacted public version of Ex. 2080 as well as a confidential version of Ex. 2080. Patent Owner therefore respectfully submits that there is good cause for sealing the confidential information designated in Ex. 2080 for the same reasons as noted above. *See* 37 C.F.R. § 42.54(a).

#### **PATENT OWNER RESPONSE**

Patent Owner's Response relies on the designated confidential information in Ex. 2048, Ex. 2083, and Ex. 2080. In accordance with the Standing Protective Order, Patent Owner has filed a redacted public version as well as a confidential version of its Response to the Petition. Patent Owner therefore respectfully submits that there is good cause for sealing the confidential information designated in Patent Owner's Response for the same reasons as noted above. *See* 37 C.F.R. § 42.54(a).

Dated: September 30, 2016

Respectfully submitted,

/Theresa M. Gillis/

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*Counsel for William Beaumont Hospital*

## **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 30th day of September, 2016, I caused the foregoing document, Patent Owner's Motion to Seal, is being served via electronic mail, upon the Patent Owner by serving counsel of record as follows:

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By: /Theresa M Gillis Reg. No 28078 /  
Theresa M. Gillis



## EXHIBIT 1

### **Default Protective Order**

~~The following Standing Protective Order will be automatically entered into the proceeding upon the filing of a petition for review or institution of a derivation:~~

### **Standing Protective Order**

This standing protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL.”

2. Access to confidential information is limited to the following individuals ~~who have executed the acknowledgment appended to this order:~~

(A) ~~Parties~~Counsel of Record. Counsel of record in this proceeding who represent Patent Owner (including William Beaumont Hospital and Elekta, Inc.) and Petitioner, including other attorneys employed by the same firm as counsel of record in this proceeding~~Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.~~

(B) ~~Party Representatives~~. ~~Representatives of record for a party in the proceeding.~~

(C)~~(B)~~ Experts. Retained experts of a party in the proceeding ~~who further certify in the Acknowledgement that they are not a competitor to any party, or a~~

~~consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding who have signed the Acknowledgement appended hereafter, with a copy of the signed acknowledgement to be provided to all parties to the proceeding.~~

~~(D) In-house counsel. In-house counsel of a party.~~

~~(E)(C)~~ Other Employees of a Party. Employees, consultants or other persons performing work for a party, ~~other than in-house counsel and in-house counsel's support staff,~~ who sign the Acknowledgement appended hereafter shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person. The party ~~opposing~~seeking disclosure to that person shall have the burden of proving that such person should not be restricted from access to confidential information.

~~(F)(D)~~ The Office. Employees and representatives of the Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

~~(G)(E)~~ Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably

necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

3. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

4. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) Documents and Information Filed With the Board.

(i) A party may file documents or information with the Board under seal, together with a non-confidential description of the nature of the confidential information that is under seal and the reasons why the information is confidential and should not be made available to the public. The submission shall be treated as confidential and remain under seal, unless, upon motion of a party and after a hearing on the issue, or sua sponte, the Board determines that the documents or information do not to qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and nonconfidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. The nonconfidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless, upon motion of a party and after a hearing on the issue, or sua sponte, the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) Documents and Information Exchanged Among the Parties. Information designated as confidential that is disclosed to another party during discovery or

other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains its confidentiality.

(j) Standard Acknowledgement of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

## **Standard Acknowledgment for Access to Protective Order Material**

I, \_\_\_\_\_, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

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