

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Berkshire Hathaway Energy Company, Interstate Power & Light Company,
MidAmerican Energy Company, PacifiCorp, WEC Energy Group, Inc., and
Wisconsin Power & Light Company

Petitioners

v.

Birchtech Corp.
(d/b/a Midwest Energy Emissions Corp.)

Patent Owner

Case IPR2025-00422
Patent 10,668,430

PATENT OWNER'S MOTION TO SEAL

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

Pursuant to 37 C.F.R. §§ 42.14, 42.55, Patent Owner Midwest Energy Emissions Corp. respectfully moves to seal Exhibits 2011 and 2017, which contain confidential information as described below. Patent Owner and Petitioners agree to be bound by the Board’s default protective order and request entry of the same.

I. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

In determining whether to grant a Motion to Seal, the Board must find “good cause” and “strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” 37 C.F.R. § 42.54(a). As described in the Office Trial Practice Guide, the Board identifies confidential information “in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” Patent Trial & Appeal Board, Consolidated Trial Practice Guide at 19 (Nov. 2019).¹

A. Exhibit 2011

Exhibit 2011 is the Expert Report of Dr. Stephen Niksa, dated October 25, 2022, from *Midwest Energy Emissions Corp., et al. v. Arthur J. Gallagher & Co., et al.*, C.A. 1:19-cv-01334 (D. Del.), which was designated “CONFIDENTIAL” by

¹ <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?MURL=TrialsPracticeGuideConsolidated>.

the defendants in that case.

Patent Owner has conferred with Petitioners, who do not oppose sealing this document.

B. Exhibit 2017

Exhibit 2017 contains details regarding confidential processes maintained by a third party—the Energy & Environmental Research Center (“EERC”). In particular, the document contains information regarding the EERC’s use of and operating procedures for its Pilot Test Combustor, which it generally maintains as confidential to protect its research initiatives and the confidentiality of information from entities that work with the EERC.

Petitioners provided the following position statement with respect to this document: “Petitioners have not seen Patent Owner’s arguments as to why the underlying documents should be sealed, but do not oppose sealing provided Patent Owner demonstrates satisfaction of the factors in *Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (Jan. 19, 2018).”

II. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37 C.F.R. § 42.54.

Respondent has conferred with Petitioners, and Petitioners do not oppose the motion, except as noted above.

THEREFORE, Patent Owner respectfully requests that the Board grant Patent Owner’s Motion to Seal.

Dated: June 9, 2025

Respectfully submitted,

Birchtech Corp.

By /Hamad M. Hamad/

Hamad M. Hamad, Reg. No. 64,641
Justin T. Nemunaitis (*pro hac pending*)
CALDWELL CASSADY CURRY, P.C.
2121 N. Pearl St., Ste. 1200
Dallas, Texas 75201
Telephone: 214.888.4848
Facsimile: 214.888.4849
hhamad@caldwellcc.com
jnemunaitis@caldwellcc.com
midwest@caldwellcc.com

CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6(e)(4)

It is hereby certified that on this 9th day of June, 2025, a copy of the foregoing document was served via electronic mail, as consented to by Petitioner upon the following counsel of record:

Brian W. Oaks (Reg. No. 44,981)
McDermott Will & Emery LLP
300 Colorado Street, Suite 2200
Austin, TX 78701
Tel: 512-726-2574

Email: dtobin@mwe.com
boaks@mwe.com
PacifiCorp-PTAB-ME2C@mwe.com
BHershkowitz@gibsondunn.com
DGlandorf@gibsondunn.com
NLitwinsella@gibsondunn.com
mkemp@perkinscoie.com
rsjohnson@fredlaw.com

tpatton@fredlaw.com
MidAmerican@fredlaw.com
Michael.piery@quarles.com
lauren.bolcar@quarles.com

Date: June 9, 2025

/Hamad M. Hamad/
Hamad M. Hamad, Reg. No. 64,641