

IPR2025-01593
Patent 10,278,961

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BONERGE LIFESCIENCE (HUNAN) CO., LTD.,
Petitioner,

v.

NANJING NUTRABUILDING BIO-TECH CO., LTD.,
Patent Owner.

IPR2025-01593
Patent 10,278,961

MOTION FOR ENTRY OF PROTECTIVE ORDER

I. INTRODUCTION

To facilitate the use of certain confidential third-party information produced in the co-pending litigation in this proceeding, with the consent of the third-party, the parties have agreed to an entry of a Protective Order in this proceeding. The parties' agreed-upon proposed Protective Order is provided as Exhibit 2110 in this proceeding.

The agreed-upon proposed Protective Order deviates from the Board's default protective order in several respects.

First, and primarily, it provides for a heightened level of confidentiality than the default protective order, in that it adds a Highly Confidential – Attorneys' Eyes Only tier.

Second, it limits "Party Representatives" in Section 2(B) of the default protective order to "[n]ecessary representatives of record for a party in the proceeding, such as owners, officers, directors."

Third, settlement officers and mediators, as well as the authors and recipients of a document or information to be designated, are added to both the Confidential and Highly Confidential tiers, More specifically, that is restricted to Outside Attorneys Eyes only, which removes Subsection 2(D) (In-house counsel) from the default protective order.

Fourth, under the added Highly Confidential tier, up to two (2) in-house

counsel are permitted to receive Highly Confidential materials or information to facilitate their advisory role.

Fifth, as to the Highly Confidential tier, expert witnesses and the Office may also view Highly Confidential materials or information.

Sixth, various revisions to the default protective order have been made simply to accommodate the existence of a second tier of confidentiality.

Seventh, because there is parallel litigation in which numerous documents and discovery materials have already been produced by the parties to this proceeding, the parties have added a Section 8 to the default protective order specifying that the parties may use the discovery materials, documents, and the like from the parallel litigation in this proceeding, and that the designations given to any confidential or highly confidential materials in the litigation shall be the same between the two proceedings.

Finally, the Standard Acknowledgment of Protective Order has been modified to more closely comport with the corresponding portion of the Protective Order from the parallel litigation.

II. ARGUMENT

A party seeking to protect confidential information may seek entry of a protective order in a proceeding before the Board. *See e.g. Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34 (PTAB Mar 14, 2013). Upon

a showing of good cause, the Board may enter a Protective Order to protect from public disclosure such confidential information as disclosed by a party during the course of a proceeding before the Board. *See* 37 C.F.R. § 42.54.

Patent Owner intends to submit certain evidence of objective indicia of non-obviousness, including financial information of Patent Owner, Petitioner, and a third-party. In the parallel litigation, these materials have been produced in substantial part, and they have been designated as Highly Confidential – Attorneys’ Eyes Only. Patent Owner’s own financial information, to the extent it will be produced herein, also warrants such designation in light of the fact that the parties to this proceeding are competitors. Patent Owner submits that, in light of the reasons discussed herein, the added limitations are necessary in this proceeding, and good cause exists to enter the agreed-upon proposed Protective Order.

The third-party whose information Patent Owner intends to rely on has designated its documents bearing such information as Highly Confidential – Attorneys’ Eyes Only under the Protective Order entered in the parallel litigation. This sensitive financial information, Petitioner’s similar financial information, and Patent Owner’s similar financial information, would put Patent Owner, Petitioner, and the third party at a competitive disadvantage if such information were to become public or shared directly with each other as competitors in the same field.

The terms of the agreed-upon proposed Protective Order are consistent with

the Protective Order entered in the parallel district court litigation and would not impose an undue burden on either party.

Finally, the proposed changes to the default protective order do not affect access to confidential information for employees and representatives of the Patent and Trademark Office who have a need for access to the confidential information. The revisions are noted in redline showing changes from the Board's Protective Order in Attachment A hereto.

III. CONCLUSION

As noted above, Petitioner has agreed to the modified proposed Protective Order. For the aforementioned reasons, good cause exists for entering the proposed Protective Order (Exh. 2110) in this proceeding.

Date: May 4, 2026

Respectfully submitted,

/s/ Mark D. Nielsen

Mark D. Nielsen

Registration No. 52,068

Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.105(b), the undersigned hereby certifies that a copy of this **MOTION FOR ENTRY OF PROTECTIVE ORDER** has been served on May 4, 2026 upon the following litigation counsel via electronic means:

- John Handy, RIMON PC (john.handy@rimonlaw.com)
- Jason Xu, RIMON PC (jason.xu@rimonlaw.com)
- Hua Chen, SCIENBIZIP, PC (HuaChen@ScienBiziPPC.com)

Date: May 4, 2026

Respectfully submitted,

/s/ Mark D. Nielsen

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ATTACHMENT A

~~DEFAULT~~MODIFIED AGREED PROTECTIVE ORDER

The following ~~Default~~ Protective Order will govern the filing and treatment of confidential information in the proceeding:

~~Default~~Modified Agreed Protective Order

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

1. Confidential information shall be clearly marked either “CONFIDENTIAL PROTECTIVE ORDER MATERIAL.” Or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY PROTECTIVE ORDER MATERIAL.”
2. Other than a party’s outside counsel to this proceeding or the parallel litigation between the parties, Aaccess to CONFIDENTIAL PROTECTIVE ORDER MATERIAL ~~confidential information~~ is limited to the following individuals who have executed the acknowledgment appended to this order:
 - (A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.
 - (B) Party Representatives. Necessary Representatives of record for a party in the Proceeding, such as owners, officers, directors.
 - (C) 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.

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

(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 documents and/or information.

(F) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential documents and/or 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) Agreed-upon settlement officers and/or mediators.

~~(F)~~(H) The author or recipient of the document and/or information in

question.

3. Access to HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY PROTECTIVE ORDER MATERIAL is limited to the following individuals who first have signed the Acknowledgment appended to this order:

(A) Following written approval by the Producing Party in response to Receiving Party's written request identifying with specificity the PROTECTIVE ORDER MATERIAL sought to be shared and the reasonable need therefor, such approval not to be unreasonably withheld, up to two designated Receiving Party House Counsel who either have responsibility for making decisions dealing directly with this litigation, or who are assisting Outside Counsel in this litigation, together with their supporting personnel from the Receiving Party, and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), with the understanding that the designated Receiving Party House Counsel and supporting administrative personnel cannot show or disclose the contents of any information or item designated HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY to any other person at Receiving Party.

(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.

(C) Party Representatives or In-house counsel

No more than two (2) persons identified as in-house counsel of a party.

(D) 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. Such support personnel 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 highly confidential attorneys' eyes only documents and/or information.

(E) The Office

Employees and representatives of the U.S. Patent and Trademark Office who have a need for access to the highly confidential attorneys' eyes only documents and/or 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 staff, other Office support personnel, court reporters, and other persons acting on

behalf of the Office.

(F) Agreed-upon settlement officers and/or mediators.

(G) The author or recipient of the document and/or information in question.

3.4. Employees (e. g. , corporate officers), consultants, or other persons performing work for a party, other than those persons identified above ~~in~~ (d)(2)(A)-(E), shall be extended access to confidential or highly confidential attorneys' eyes only documents and/or information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential or highly confidential attorneys' eyes only documents and/or information to that person and after signing the Acknowledgment. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential or highly confidential attorneys' eyes only documents and/or information.

4.5. Persons receiving confidential or highly confidential attorneys' eyes only documents and/or 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 or highly confidential attorneys' eyes only documents and/or 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 or highly confidential attorneys' eyes only documents and/or information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5.6. Persons receiving confidential or highly confidential attorneys' eyes only documents and/or 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 along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential or highly confidential attorneys' eyes only documents and/or

information that is under seal, and set forth the reasons why the information is confidential or highly confidential attorneys' eyes only and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential or highly confidential attorneys' eyes only 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 non-confidential 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 or highly confidential attorneys' eyes only and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential 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 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.

Documents (including deposition transcripts) and other information designated as confidential or highly confidential attorneys' eyes only - that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as "CONFIDENTIAL PROTECTIVE ORDER MATERIAL" or "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY PROTECTIVE ORDER MATERIAL" and shall be produced in a manner that maintains its confidentiality.

7. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions each party receiving confidential or highly confidential attorneys' eyes only documents and/or information must return or certify the destruction of all copies of the confidential or highly confidential attorneys' eyes only documents and/or information to the producing party.

8. Use of Documents from District Court Litigation

6. -The Parties agree that discovery responses, deposition testimony, and/or

documents produced or provided in the related district court litigation, *Nanjing Nutrabuilding Bio-Tech Co., Ltd. v. Bonerge Lifescience (Hunan) Co., Ltd.*, United States District Court for the Central District of California, Case No. 5:25-cv-00271-JGB-SPx, may be used in this proceeding, and shall be treated with the same designations under the Protective Order from the litigation.

(k) ~~Standard Requirement of 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: Any person receiving CONFIDENTIAL PROTECTIVE ORDER MATERIAL or HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY PROTECTIVE ORDER documents and/or information during a proceeding before the Board shall, prior to receipt of any such documents and/or information, first sign and Acknowledgment, attached hereto as Exhibit A, under penalty of perjury, stating the following:

(A) The person has read the Protective Order and understands its terms;

(B) The person agrees to be bound by the Protective Order and will abide by its terms;

(C) The person will use the confidential or highly confidential attorneys' eyes only documents and/or information only in connection with that proceeding and for no other purpose;

(D) The person shall only extend access to the confidential documents and/or information to support personnel, such as administrative assistants, clerical staff, paralegals, and the like, who are reasonably necessary to assist him or her in the proceeding. The person shall inform such support personnel of the terms and requirements of the Protective Order prior to disclosure of any confidential or highly confidential attorneys' eyes only documents and/or information to such support personnel and shall be personally responsible for their compliance with the terms of the Protective Order; and

(E) The person agrees to submit to the jurisdiction of the Office for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

proceeding of Bonerge Lifescience (Hunan) Co., Ltd. v. Nanjing Nutrabuilding Bio-Tech Co., Ltd., Proceeding No. IPR2025-01593.

I agree to comply with and to be bound by all the terms of this Agreed Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Agreed Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I will use the confidential or highly confidential attorneys' eyes only documents and/or information only in connection with the above-referenced proceeding and for no other purpose;

I will only extend access to the confidential or highly confidential attorneys' eyes only documents and/or information to support personnel, such as administrative assistants, clerical staff, paralegals, and the like, who are reasonably necessary to assist me in this proceeding. I have informed such support personnel of the terms and requirements of this Agreed Protective Order prior to disclosure of any confidential or highly confidential attorneys' eyes only documents and/or

information to such support personnel and I shall be personally responsible for their compliance with the terms of this Agreed Protective Order.

I further agree to submit to the jurisdiction of the United States Patent and Trademark Office, Patent Trial and Appeal Board, for the purpose of enforcing the terms of this Agreed Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____

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.~~

[Signature]