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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206026
Party	Plaintiff Victualic Company
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Signature	/Bryan P. Sugar/
Date	05/13/2013
Attachments	Victaulic Motion for Protective Order.pdf(96749 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

Victaulic Company of America,	)		
	)		
Opposer,	)	Cancellation No.:	91206026
	)	Serial No.:	85/502,864
v.	)		
	)		
Shurjoint Piping Products, Inc.	)		
	)		
Applicant.	)		

**VICTAULIC’S MOTION FOR A PROTECTIVE ORDER**

Opposer, Victaulic Company of America (hereinafter “Victaulic” or “Opposer”) hereby moves for the entry of a protective order. In support of its motion, Victaulic states as follows:

**INTRODUCTION**

There is no dispute between the parties as to whether a protective order should be entered in this case. Both parties have responded to document requests that they will produce documents once a protective order is in place. However, Shurjoint Piping Products, Inc. (“Shurjoint”) has been unresponsive to Victaulic’s attempts to obtain agreement on an acceptable protective order. Because Shurjoint has failed to respond to Victaulic’s several attempts to obtain a protective order, the Interlocutory Attorney should grant Victaulic’s motion and enter the protective order attached as Exhibit 1.

**PROCEDURAL HISTORY**

Victaulic filed the instant opposition on July 11, 2012. On October 12, 2012, counsel for Victaulic sent the attached protective order to counsel for Shurjoint for comment. Counsel failed to provide any comments to the protective order or indicate consent to the terms. Counsel for

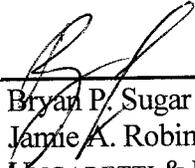
Victaulic sent the same protective order again to counsel for Shurjoint on March 8, 2013 and April 11, 2013. Counsel for Shurjoint again failed to provide any comments or indicate consent.

WHEREFORE, Opposer Victaulic Company of America hereby requests that this tribunal enter the attached protective order and for any further relief that the Interlocutory Attorney deems just.

Respectfully submitted,

**Victaulic Company of America**

By: \_\_\_\_\_

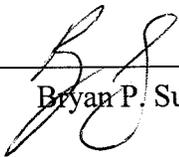
  
Bryan P. Sugar  
Jamie A. Robinson  
UNGARETTI & HARRIS LLP  
70 W. Madison Street  
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(312)977-4400  
(312)977-4405 facsimile

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 13th day of May 2013, a true copy of the foregoing Reply to Respondent's Second Request for Production of Documents to Petitioner was served upon the following via email and via First-Class Mail, postage prepaid, to the following representative:

Mark H. Tidman  
BAKER & HOSTETLER LLP  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5300

By: \_\_\_\_\_

  
Bryan P. Sugar

# EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Victaulic Company of America,	)	
	)	
Opposer,	)	Opposition No. 91206026
	)	Serial No. 85502864
v.	)	Mark: SHURJOINT
	)	
Shurjoint Piping Products, Inc.,	)	
	)	
Applicant	)	

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**PROTECTIVE ORDER**

IT IS HEREBY ordered by the Trademark Trial and Appeal Board (the “Board”), that the following procedures shall govern the producing and exchange of all documents, testimony, interrogatories, and other information produced, given, or exchanged by and among all parties, including (i) the parties presently named in the this action, their subsidiaries, affiliates, and licensee; and (ii) third parties subject to discovery in this proceeding.

**Purpose**

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, either the parties have agreed to be bound by the terms of this order and the Board has ordered that the parties be bound by the provisions herein. As used in this order, the term "information" covers both oral testimony and documentary material.

**Terms of the Order**

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

**1) Classes of Protected Information.**

The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

**Confidential** -Material to be shielded by the Board from public access. For purposes of this Order, “Confidential” information shall mean all information and material which is produced for or disclosed to a receiving party, and which a producing party in good faith considers to constitute or to contain proprietary or confidential material or information

which the designating party desires not be made public, whether embodied in physical objects, documents, electronic files or media, or the factual knowledge of persons, and that has been so designated in good faith by the producing party in the matter set forth hereafter.

**Attorney's Eyes Only** -Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys.

**Outside Counsel Only** -Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of paragraph 4 and 5, by independent experts or consultants for the parties.

## **2) Information Not to Be Designated as Protected.**

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

## **3) Access to Protected Information.**

The provisions of this order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

Parties are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.

Attorneys for parties are defined as including in-house counsel and outside counsel, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.

Independent experts or consultants include individuals (as well as their support staff and those employed by such experts and consultants in the course of their activities) retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.

Non-party witnesses include any individuals to be deposed during discovery or trial, whether

willingly or under subpoena issued by a court of competent jurisdiction over the witness.

Parties and their attorneys shall have access to information designated as **Confidential**, subject to any agreed exceptions. However, the individual employees of the parties shall have access to information designated as Confidential only on a “need to know” basis for purposes of this proceeding.

The parties’ **attorneys**, including both in-house attorneys as reasonably involved in this dispute and outside counsel, shall have access to information designated as **Attorney’s Eyes Only**.

**Outside counsel**, but not in-house counsel, shall have access to information designated as **Outside Counsel Only**.

**Independent experts or consultants** may have access to any and all information, regardless of designation in accordance with the terms that follow in paragraph 4. Independent experts and consultants shall not include any Confidential, Attorney’s Eyes Only, or Outside Counsel Only information in any work product or reports, unless such work product and reports are also designated as in accordance with confidentiality levels of the information.

#### **4) Disclosure to Any Individual.**

Prior to disclosure of protected information by any party or its attorney to any independent experts or consultants (jointly, “Expert”), the Expert shall be informed of the existence of this order and provided with a copy to read. The Expert will then be required to certify in writing that the order has been read and understood and that the terms shall be binding upon the individual. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

#### **5) Responses to Written Discovery.**

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

#### **6) Production of Documents.**

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

## **7) Depositions.**

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information. However, failure to orally note the protected status of a document or any non-documentary information shall not serve as a waiver of the protected status.

The transcript of any deposition and all exhibits or attachments shall be considered protected for 30 days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected. Notwithstanding the foregoing, the parties consent to any written or oral requests to extend the 30-day deadline for up to an additional 60 days, provided that neither party provides a reasonable basis for requiring finalized designations and corrections sooner.

## **8) Filing Notices of Reliance.**

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

## **9) Briefs.**

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 12 of this order.

## **10) Handling of Protected Information.**

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case. The recipient of any protected information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

## **11) Redaction; Filing Material with the Board.**

When a party or attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied

would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

*This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.*

**12) Acceptance of Information; Inadvertent Disclosure.**

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

**13) Challenges to Designations of Information as Protected.**

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

The party designating information as protected will, when its designation is timely challenged, bear the burden of proving that the information should be protected.

**14) Board's Jurisdiction; Handling of Materials After Termination.**

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without any such appeal having been filed.

The parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned.

**15) Other Rights of the Parties and Attorneys.**

This order shall **not** preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order.

By Agreement of the Following, effective:

\_\_\_\_\_

Attorney for Applicant

\_\_\_\_\_

Mark H. Tidman  
Baker & Hostetler LLP

Attorney for Opposer

\_\_\_\_\_

Bryan P. Sugar  
Ungaretti & Harris LLP

By Order of the Board, effective \_\_\_\_\_.

\_\_\_\_\_

Name of Board  
Attorney or Judge  
imposing order \_\_\_\_\_

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Victaulic Company of America, Opposer	)	
	)	
	)	
	)	Opposition No. 91206026
	)	Serial No. 85502864
v.	)	Mark: SHURJOINT
	)	
	)	
Shurjoint Piping Products, Inc., Applicant	)	
	)	

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**ACKNOWLEDGEMENT OF  
ORDER PROTECTING CONFIDENTIALITY  
OF INFORMATION REVEALED DURING  
BOARD PROCEEDING**

I, \_\_\_\_\_ [print name], declare that I have been provided with a copy of the Order regarding the disclosure of, and protection of, certain types of information and documents during and after the above-captioned opposition proceeding before the Trademark Trial and Appeal Board.

I have read the Order and understand its terms and provisions and agree to be bound by its terms and provisions. Specifically, I agree to hold in confidence any information or document disclosed to me in conjunction with any part I take in this proceeding.

I declare under penalty of perjury that these statements are true and correct.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Title]

\_\_\_\_\_  
[Date]