

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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**FISERV, INC., JACK HENRY & ASSOCIATES, INC., Q2 SOFTWARE,  
INC., AMERICAN NATIONAL BANK OF TEXAS and HANMI BANK**  
Petitioner,

v.

**MIRROR IMAGING, LLC,**  
Patent Owner.

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Case CBM2018-00014  
Patent No. 6,963,866

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**PATENT OWNER'S MOTION TO SEAL MIRROR IMAGING'S  
PRELIMINARY RESPONSE**

## **I. Introduction**

In accordance with the Board's E-mail of July 2, 2018, Patent Owner Mirror Imaging, LLC ("Mirror Imaging") files this Motion to Seal Mirror Imaging's Preliminary Response ("Response") regarding confidential Exhibits 1020, 1076 and 1077. Mirror Imaging requests that the parts of Mirror Imaging's Response quoting and describing Fiserv's confidential exhibits be sealed under 37 C.F.R. § 42.54. Mirror Imaging's Response quotes and explains Fiserv's contracts with its customers, which constitute highly confidential information about Fiserv's business and operations regarding Fiserv's products sold to its customer banks that is not public and that a business would not make public.

Mirror Imaging has contacted Petitioner regarding this Motion to Seal and Petitioner does not oppose.

## **II. Governing Rules and PTAB Guidance**

Under 35 U.S.C. § 326(a)(1), the default rule is that all papers filed in a post-grant review are open and available for access by the public, but a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. *See* 37 C.F.R. § 42.14.

Under the statute, "confidential information" is protected from disclosure. 35 U.S.C. § 326(a)(7) ("The Director shall prescribe regulations -- . . . providing for protective orders governing the exchange and submission of confidential

information”). In that regard, the Office Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012), provides:

The rules aim to 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.

\*\*\* Confidential Information: The rules identify 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.

§ 42.54.

The standard for granting a motion to seal is “for good cause,” 37 C.F.R. § 42.54, and the moving party has the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c). A motion to seal is also required to include a proposed protective order and a certification that the moving party has in good faith conferred or attempted to confer with the opposing party in an effort to come to an agreement as to the scope of the proposed protective order for this CBM review. 37 C.F.R. § 42.54.

### **III. Indication of Confidential Information**

The confidential information in Mirror Imaging's Rehearing consists of Petitioner's internal Electronic Banking Services Addendum contracts and business dealings with its customers and privies, Austin Bancorp, ANBTX and Hanmi Bank. *See* Response at 37-42. Petitioner's Petition and the declarations of Donald Kenneth Hobday, Jr., Fiserv's in-house counsel, rely on these Services Addenda to show that Petitioner's customers purchased the accused products from Fiserv. *See* Petition at 41-45; Ex. 1076-77 (Hanmi Bank); Ex. 1040, ¶ 6 (ANBTX); Ex. 1017, ¶ 10 (Austin Bancorp). Mirror Imaging's Response quotes provisions of the Services Addenda that set forth additional indemnity obligations and argues the meaning of these additional provisions.

### **IV. Good Cause Exists for Sealing the Confidential Information in Patent Owner's Supplemental Brief**

In *Laird Technologies v. Graftech International Holdings*, the Board found that information related to license terms, customer invoice information and technology agreements that had not been published or otherwise been made public "is sensitive financial information that a business would not make public" and establishes good cause for granting a motion to seal. IPR2014-00023, Paper 30 at 3-4 (PTAB Aug. 8 2014); IPR2014-00024, Paper 28 at 3-4 (PTAB Aug. 8 2014); IPR2014-00025, paper 27 at 3-4 (PTAB Aug. 8 2014). The facts are similar here. The redacted information in Mirror Imaging's Response consists of contractual

obligation language in contracts between Fiserv and its customers regarding Fiserv's BeB and CeB products that has not been published, publicized, or otherwise shared or made public and that is highly sensitive business information that a business would not make public. Fiserv's contractual provisions for its specific products, if made public, would create a competitive disadvantage for Fiserv because it would provide Fiserv's competitors with knowledge of Fiserv's business structures and contract terms that they could then use against Fiserv in seeking future clients.

One of Fiserv's competitors, FIS, has also filed CBM petitions against Patent Owner's patents in CBM2017-00064, -00065, -00066, and -00067. Thus, Fiserv's chief competitors are likely monitoring documents filed in this CBM. FIS also redacted much of its own contracts (*see, e.g.*, CBM2017-00064, Exs. 1052, 1053), indicating that Fiserv's business competitors consider customer contracts and the terms contained therein—e.g., the information in Fiserv's Response—highly confidential information that should be protected from disclosure.

Accordingly, there is good cause to grant this motion to seal Fiserv's Response.

## **V. Agreed Protective Order**

The parties have agreed to modify the Board's Default Protective Order, located in Appendix B of the Trial Practice Guide. The only modifications are to

remove sections 2(D) and 2(E) of the Default Protective Order, as set forth in Fiserv's Motion to Seal Exhibits 1014 and 1076-77 (Paper 17).

The parties have signed acknowledgements indicating agreement to treat the materials in accordance with the agreed upon Protective Order.

## **VI. Conclusion**

Based on the foregoing and the scope of protection sought, there is good cause to grant this motion to seal Mirror Imaging's Preliminary Response. 37 C.F.R. § 42.54. For the reasons set forth above, Patent Owner respectfully requests that the Board grant this motion to seal and enter the agreed upon Protective Order.

Dated: July 6, 2018

Respectfully submitted,

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## CERTIFICATE OF SERVICE

It is hereby certified that on July 6, 2018, a copy of the foregoing document was served via Electronic Mail upon the following:

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