

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**Fiserv, Inc., Jack Henry & Associates, Inc., Q2 Software, Inc., American
National Bank of Texas and Hanmi Bank,**
Petitioner,

v.

Mirror Imaging, LLC,
Patent Owner.

Case CBM2018-00017
Patent No. 7,552,118

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

I. Introduction

In accordance with 37 C.F.R. 37 C.F.R. § 42.54, Patent Owner Mirror Imaging, LLC (“Mirror Imaging”) files this Motion to Seal Mirror Imaging’s Preliminary Response (“Response”). Paper 17. 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.

The parties have met and conferred regarding a redacted version of Mirror Imaging’s Response, which is being filed concurrently with this Motion.

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 Response consists of Petitioner's Service Agreements ("Agreements") with its customers and privies, Hanmi Bank, Austin Bank Texas NA, and ANBTX. *See* Preliminary Response at 37-46. Petitioner's Petition and the declarations of Fiserv's general counsel, Jack Henry's counsel and Q2's counsel rely on these Services Agreements to show that Petitioner's customers purchased the accused products from Fiserv. Ex. 1052, ¶ 7 (ANBTX); Ex. 1076 (Hanmi Bank). Mirror Imaging's Response quotes provisions of the Agreements 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 Petitioner and Hanmi Bank and

American National Bank of Texas 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. Petitioner's contractual provisions for its specific products, if made public, would create a competitive disadvantage for Petitioner because it would provide Petitioner's competitors with knowledge of Petitioner's business structures and contract terms that they could then use against Petitioner in seeking future clients.

One of Petitioner's competitors, Fidelity Information Services, has also filed CBM petitions against Patent Owner's patents in CBM2017-00064, -00065, -00066, and -00067. Thus, Petitioner's chief competitor is likely monitoring documents filed in this CBM. Fidelity Information Services also redacted much of their own contracts (*see, e.g.*, CBM2017-00065, Exs. 1030-32, 1038-41), indicating that Petitioner's business competitors consider customer contracts and the terms contained therein—e.g., the information in Petitioner's Petition—highly confidential information that should be protected from disclosure.

Accordingly, there is good cause to grant this motion to seal Mirror Imaging's Preliminary Response.

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: April 23, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that on April 23, 2018, a copy of the foregoing document was served via Electronic Mail upon the following:

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