

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COX COMMUNICATIONS, INC.,
Petitioner,
v.
AT&T INTELLECTUAL PROPERTY I, L.P. and
AT&T INTELLECTUAL PROPERTY II, L.P.,
Patent Owners.¹

Case IPR2015-01187 (Patent 6,993,353 B2)²
Case IPR2015-01227 (Patent 7,907,714 B2)
Case IPR2015-01273 (Patent 6,487,200 B1)
Case IPR2015-01536 (Patent 8,855,147 B2)

Before MICHAEL R. ZECHER, BRIAN P. MURPHY, and
SHEILA F. McSHANE, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

DECISION
Granting the Parties' Motions to Expunge
37 C.F.R. § 42.56

¹ AT&T Intellectual Property I, L.P., is the Patent Owner in Case IPR2015-01227, whereas AT&T Intellectual Property II, L.P. is the Patent Owner in Cases IPR2015-01187, IPR2015-01273, and IPR2015-01536.

² This Decision addresses similar issues in the referenced cases, therefore, we issue a single Decision to be filed in each case.

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I. DISCUSSION

On November 15, 2016, we issued Final Written Decisions in Cases IPR2015-01187 and IPR2015-01227. Paper 59 (IPR2015-01187); Paper 70 (IPR2015-01227). The time period for appealing these Final Written Decisions to the U.S. Court of Appeals for the Federal Circuit expired on January 17, 2017. *See* 37 C.F.R. § 90.3(a)(1) (setting the time period for filing a notice of appeal of a final Board decision under 35 U.S.C. § 141 at sixty-three (63) days). On December 8, 2016, upon the grant of a Joint Motion to Terminate in Case IPR2015-01273 (Paper 65), and the grant of a Joint Motion to Terminate in Case IPR2015-01536 (Paper 63), trials were terminated in these proceedings. Paper 67 (IPR2015-01273); Paper 65 (IPR2015-01536).

On December 14, 2016, Petitioner filed Motions to Expunge Papers 15 and 18 and Exhibits 2026 and 2031 in Case 2015-01187, and Papers 21 and 27 and Exhibits 2026 and 2031 in Case IPR2015-01227. Paper 60 (IPR2015-01187); Paper 71 (Case IPR2015-01227). On the same day, Petitioner filed Motions to Expunge, seeking to expunge Papers 22 and 26 and Exhibits 2026 and 2031 in Case IPR2015-01273, and Papers 16 and 20 and Exhibits 2026 and 2031 in IPR2015-01536. Paper 68 (IPR2015-1273); Paper 66 (IPR2015-01536). On January 12, 2017, Patent Owner filed a Motion to Expunge, seeking to expunge Exhibits 2061, 2062, and 2063 in Case IPR2015-01536. Paper 67.

Regarding Petitioner's Motions to Expunge filed in all four cases, the information in the documents at issue had been designated as confidential

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information pursuant to the protective orders entered in these proceedings, associated motions to seal were filed, and the motions to seal were granted. *See* Papers 19, 23, and 26 (IPR2015-01187); Papers 22, 25, and 28 (IPR2015-1227); Papers 23, 24, and 27 (IPR2015-01273); Papers 17, 18, and 21 (IPR2015-01536). Petitioner alleges that the documents for which expungement is sought are related only to an alleged real party in interest issue, which the Patent Owner withdrew from consideration, and the documents are not relevant, nor were they relied upon, in entering either the Final Written Decisions or the Decisions to Terminate the Trials in these cases. *See* Paper 60, 4–5 (IPR2015-01187); Paper 71, 4–5 (IPR2015-01227); Paper 68, 4–5 (IPR2015-01273); Paper 66, 4–5 (IPR2015-01536). Petitioner also asserts that the information at issue concerns confidential information, including details of confidential structured settlement discussions, which, according to Petitioner, may cause it commercial harm if made public. *See* Paper 60, 5–8 (IPR2015-01187); Paper 71, 5–8 (IPR2015-01227); Paper 68, 5–8 (IPR2015-01273); Paper 66, 5–8 (IPR2015-01536). Patent Owner does not oppose Petitioner’s Motions to Expunge.

Regarding Patent Owner’s Motion to Expunge filed in Case IPR2015-01536, Patent Owner alleges that the information in the documents at issue had been designated as confidential information pursuant to the protective orders entered in these proceedings, an associated motion to seal was filed, and the motion to seal was not opposed by Petitioner. *See* Paper 37. Patent Owner alleges that the documents for which expungement is sought contain confidential attorney-client information. Paper 67, 2. Patent Owner also asserts that the information at issue concerns information not available to the

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public, which would cause harm to the Patent Owner if such information was made public. *Id.* Additionally, Patent Owner alleges that the exhibits at issue were not identified in any decisions of record, nor were they discussed at oral hearing. *Id.* at 2–3. Petitioner does not oppose Patent Owner’s Motion to Expunge.

Under these circumstances, we determine that it is appropriate to grant the parties’ Motions to Expunge the aforementioned papers and exhibits. *See* 37 C.F.R. § 42.56. A strong public policy exists for making information filed in an *inter partes* review publicly available. 37 C.F.R. § 42.14; *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760–61 (Aug. 14, 2012) (“Trial Practice Guide”) (discussing confidential information and the expungement of such information when it has not been referred to in decision whether to institute trial or a final written decision following trial). Only “confidential information” is protected from disclosure. 35 U.S.C. § 316(a)(7). Upon final judgment in a trial, a party wishing to maintain the confidentiality of information must file a motion to expunge the information from the record, lest it become public. 37 C.F.R. § 42.56; Trial Practice Guide, 77 Fed. Reg. at 48,761. These provisions balance the public’s interest in maintaining a complete and understandable file history with the parties’ interest in protecting truly sensitive information. Trial Practice Guide, 77 Fed. Reg. at 48,760.

Here, in instituting these trials, we did not consider any of the documents the parties now seek to expunge. Additionally, we did not consider or rely upon these documents in the Final Written Decisions or the Decisions to Terminate the Trials. As such, we do not discern that there are

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any issues of public interest reflected in the confidential portions of these documents that are required to maintain complete and understandable file histories. We also agree with the parties that there is the potential for commercial harm if the confidential information in the documents at issue were made public. *See* 37 C.F.R. § 42.2. Under these particular circumstances, granting these Motions to Expunge considers and serves to balance the interests of the public and the parties.

II. ORDER

Accordingly, it is:

ORDERED that the parties' Motions to Expunge are *granted*;

FURTHER ORDERED that Papers 15 and 18 and Exhibits 2026 and 2031 in Case 2015-01187 are *expunged*;

FURTHER ORDERED that Papers 21 and 27 and Exhibits 2026 and 2031 in Case IPR2015-01227 are *expunged*;

FURTHER ORDERED that Papers 22 and Paper 26 and Exhibit 2026 and 2031 in Case IPR2015-01273 are *expunged*; and

FURTHER ORDERED that Papers 16 and 20 and Exhibits 2026, 2031, 2061, 2062, and 2063 in Case IPR2015-01536 are *expunged*.

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