

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC.,
ELECTRONIC ARTS INC.,
TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K SPORTS, INC., and
ROCKSTAR GAMES, INC.,
Petitioner,

v.

ACCELERATION BAY, LLC,
Patent Owner.

Case IPR2016-00747
Patent 6,732,147 B1

Before SALLY C. MEDLEY, LYNNE E. PETTIGREW, and
WILLIAM M. FINK, *Administrative Patent Judges*.

FINK, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
Motions to Seal
37 C.F.R. §§ 42.5, 42.14, 42.54

Motions to Seal

In its unopposed Motion to Seal, Patent Owner seeks to seal portions of its Patent Owner Response (Paper 24) and portions of Exhibits 2004, 2006, 2008, and 2009. Paper 26 (“PO Mot.”), 1–6. Patent Owner represents that the Patent Owner Response and Exhibits contain “highly confidential information regarding internal research and development efforts of a third party, including internal project codenames which the third party has deemed confidential.”

Id. Patent Owner filed redacted versions of its Patent Owner Response (Paper 25) and redacted versions of Exhibits 2004, 2006, 2008, and 2009.

In its unopposed Motion to Seal (Paper 39), Petitioner seeks to seal portions of its Petitioner’s Reply and Exhibits 1201 and 1207 in their entirety because they cite to papers and exhibits that *Patent Owner* alleges contain “highly confidential information.” Paper 39 (“Pet. Mot.”), 4. Petitioner filed a redacted version of its Petitioner’s Reply (paper 38), but did not file redacted versions of Exhibits 1201 and 1207.

There is a strong public policy that favors making information filed in an *inter partes* review open to the public. *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, Case IPR2012-00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). The standard for granting a motion to seal is good cause. 37 C.F.R. § 42.54. That standard includes showing that the information addressed in the motion to seal is truly confidential, and that such confidentiality outweighs the strong public interest in having the record open to the public. *See Garmin*, slip op. at 2–3.

We have considered the arguments presented by the parties in their respective motions and determine that good cause has been established for sealing the documents identified in Patent Owner’s motion, but not the documents identified in Petitioner’s motion. Specifically, Patent Owner

demonstrates that the information sought to be sealed per its motion contains confidential information regarding research and development efforts and licensing practices of a third party. Based on the record before us, Patent Owner has redacted only necessary portions of the documents. Accordingly, we grant Patent Owner's Motion to Seal, including Patent Owner's unopposed request for entry of the Proposed Stipulated Protective Order (Exhibit A attached to the Motion), which is the Board's default protective order provided in the Office Patent Trial Practice Guide. *See* 77 Fed. Reg. 48,756, 48,769–71 (Aug. 24, 2012). The record will be preserved in its entirety, and the confidential documents will not be expunged or made public, pending the outcome of any appeal taken from the Final Written Decision. At the conclusion of any appeal, or, if no appeal is taken, after the time for filing a notice appeal has expired, the documents may be made public. *See id.* at 3–4. At that time, either party may file a motion to expunge sealed documents from the record pursuant to 37 C.F.R. § 42.56.

Petitioner filed its Motion to Seal because of Patent Owner's alleged "indiscriminate designation of the entire deposition transcripts of certain witnesses as confidential under the Protective Order." Pet. Mot. 2. Petitioner contends that it reached out to Patent Owner on several occasions to resolve which documents should be sealed to no avail. *Id.* at 3. Per the Scheduling Order entered September 12, 2016, "[i]t is the responsibility of the party whose confidential information is at issue . . . to file the motion to seal." Paper 12, 2. Based on the record before us, good cause has not been shown to grant the request to seal Petitioner's Reply and Exhibits 1201 and 1207. Accordingly, we *deny* Petitioner's Motion to Seal without prejudice for the parties to work together to jointly file a motion to seal. If the parties jointly determine to file a motion to seal, the motion shall be accompanied with non-

confidential, redacted versions of Exhibits 1201 and 1207 (with the same exhibit numbers as the currently filed confidential exhibits), along with an updated redacted Petitioner's Reply (to be numbered by the system). To the extent that the parties have reconsidered the need to maintain confidentiality as to any of Exhibits 1201 and 1207 and the Petitioner's Reply, the parties are instructed to notify the Board via email of any currently confidential documents that the parties wish to de-designate as confidential. The parties are authorized to file such a joint motion to seal, along with redacted Exhibits 1201 and 1207 and an updated redacted Petitioner's Reply seven (7) business days from the date of this order. The parties are instructed to meet and confer in good faith as necessary to comply with this order. 37 C.F.R. § 42.11.

Order

It is:

ORDERED that Patent Owner's Motion to Seal is *granted*; and

FURTHER ORDERED that Petitioner's Motion to Seal is *denied* without prejudice for the parties to file a joint motion to seal in compliance with this order within seven (7) business days of this order.

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