

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

PROMPTU SYSTEMS CORPORATION,
Patent Owner

Case No. IPR2018-00344
U.S. Pat. No. 7,047,196

JOINT MOTION FOR ENTRY OF MODIFIED PROTECTIVE ORDER

Pursuant to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,769-71 (Aug. 14, 2012), 35 U.S.C. § 316, and 37 C.F.R. § 42.54, Petitioner Comcast Cable Communications, LLC and Patent Owner Promptu Systems Corporation jointly move for entry of a Modified Protective Order attached hereto as Appendix A.

The Parties met and conferred regarding revisions to the Default Protective Order available in the Trial Practice Guide. The revised Protective Order is based on the Default Protective Order provided in Appendix B of the Trial Practice Guide, with modifications agreed upon by the Parties. A document comparing the Parties' Modified Protective Order with the Default Protective order is attached as Appendix B to this paper.

The Modified Protective Order differs from the Default protective order primarily by defining two levels of confidentiality: "PROTECTIVE ORDER MATERIAL" and "CONFIDENTIAL OUTSIDE COUNSEL ONLY." The "CONFIDENTIAL OUTSIDE COUNSEL ONLY" designation is more stringent than "PROTECTIVE ORDER MATERIAL" and includes information that is "extremely confidential and/or sensitive in nature," and of which "disclosure . . . to another party or nonparty would create a substantial risk of serious and immediate harm to the producing party that could not be avoided by less restrictive means." Such information is limited to only a subset of the individuals listed in Paragraph 2

of the Modified Protective Order.

These modifications to the Default Protective Order are deemed necessary by both parties to protect confidential information and to align the protective order in this proceeding with the protective order in the related district court litigation *Promptu Systems Corporation v. Comcast Corporation*, Case No. 2:16-cv-06516-JS.

For the above reasons, the Parties respectfully request the Board enter the Modified Protective Order attached hereto as Appendix A.

Jointly submitted,

Dated: August 30, 2018

By: /Joshua L. Goldberg/
Joshua L. Goldberg
Finnegan, Henderson, Farabow, Garrett &
Dunner, LLP
Reg. No. 59,369
Lead Counsel for Patent Owner

By: /James L. Day/
James L. Day
Farella Braun + Martell LLP
Reg. No. 72,681
Lead Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I, Lisa C. Hines, certify that on August 30, 2018, a copy **JOINT MOTION FOR ENTRY OF MODIFIED PROTECTIVE ORDER** was served upon the below-listed counsel by electronic mail:

James L. Day
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Leo L. Lam
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Dated: August 30, 2018

By: /Lisa C. Hines/
Lisa C. Hines
Litigation Legal Assistant
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

APPENDIX A

UNITED STATES PATENT AND TRADEMARK OFFICE

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MODIFIED PROTECTIVE ORDER

This standing protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL” or “CONFIDENTIAL OUTSIDE COUNSEL ONLY.”

2. For purposes of this Order “PROTECTIVE ORDER MATERIAL” shall mean all information or material produced for or disclosed in connection with this proceeding to a receiving party that a producing party, including any party to this action and any non-party producing information or material voluntarily or pursuant to a subpoena or a court order in connection with this proceeding, considers to comprise confidential technical, sales, marketing, financial, or other commercially sensitive information, whether embodied in physical objects, documents, or the factual knowledge of persons, and which has been so designated by the producing party. Access to confidential information marked as “PROTECTIVE ORDER MATERIAL” is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

(B) Party Representatives. Representatives of record for a party in the proceeding.

(C) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

(D) In-House Counsel. In-house counsel of a party.

(E) Other Employees of a Party. Employees, consultants or other persons performing work for a party, other than in-house counsel and in-house counsel's support staff, who sign the Acknowledgement shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

(F) The Office. Employees and representatives of the Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

(G) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

3. The “CONFIDENTIAL OUTSIDE COUNSEL ONLY” designation is reserved for confidential information that contains or reflects information that is extremely confidential and/or sensitive in nature and disclosure of which to another party or nonparty would create a substantial risk of serious and immediate harm to the producing party that could not be avoided by less restrictive means. Such CONFIDENTIAL OUTSIDE COUNSEL ONLY information may include: (a) marketing, financial, sales, web traffic, research and development, or technical, data or information; (b) commercially sensitive competitive information, including, without limitation, information obtained from a nonparty pursuant to a current Nondisclosure Agreement ("NDA"); (c) information or data relating to future products not yet commercially released and/or strategic plans; and, (d) commercial agreements, settlement agreements or settlement communications, the disclosure of which is likely to cause serious and immediate harm to the competitive position of

the producing party. Documents marked CONFIDENTIAL OUTSIDE ATTORNEYS' EYES ONLY, HIGHLY CONFIDENTIAL or RESTRICTED CONFIDENTIAL shall be treated as if marked CONFIDENTIAL OUTSIDE COUNSEL ONLY. In determining whether information should be designated as CONFIDENTIAL OUTSIDE COUNSEL ONLY, each party agrees to use such designation only in good faith.

4. Access to confidential information marked as "CONFIDENTIAL OUTSIDE COUNSEL ONLY" is limited to only those individuals listed in Paragraphs 2.B, C, F, and support personnel listed in paragraph G for individuals listed in Paragraphs 2.B, 2.C, and 2.F.

5. Persons receiving confidential information under either of the above designations shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient

uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

6. Persons receiving confidential information under either of the above designations shall use the following procedures to maintain the confidentiality of the information:

(A) Documents and Information Filed With the Board.

(i) A party may file documents or information with the Board under seal, together with a non-confidential description of the nature of the confidential information that is under seal and the reasons why the information is confidential and should not be made available to the public. The submission shall be treated as confidential and remain under seal, unless, upon motion of a party and after a hearing on the issue, or sua sponte, the Board

determines that the documents or information do not to qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless, upon motion of a party and after a hearing on the issue, or sua sponte, the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) Documents and Information Exchanged Among the Parties. Information designated as confidential that is disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL” or “CONFIDENTIAL OUTSIDE COUNSEL ONLY” and shall be produced in a manner that maintains its confidentiality.

(C) Standard Acknowledgement of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,

Petitioner

v.

PROMPTU SYSTEMS CORPORATION,

Patent Owner

Case No. IPR2018-00344

U.S. Patent No. 7,047,196

**ACKNOWLEDGEMENT FOR ACCESS
TO PROTECTIVE ORDER MATERIAL**

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am

personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

Dated:

By: _____

APPENDIX B

DEFAULT_____

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MODIFIED PROTECTIVE ORDER

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1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL” or “CONFIDENTIAL OUTSIDE COUNSEL ONLY.”

~~2. Access to confidential information~~

2. For purposes of this Order “PROTECTIVE ORDER MATERIAL” shall mean all information or material produced for or disclosed in connection with this proceeding to a receiving party that a producing party, including any party to this action and any non-party producing information or material voluntarily or pursuant to a subpoena or a court order in connection with this proceeding, considers to comprise confidential technical, sales, marketing, financial, or other commercially sensitive information, whether embodied in physical objects, documents, or the factual knowledge of persons, and which has been so designated by the producing party. Access to confidential information marked as “PROTECTIVE ORDER MATERIAL” is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

(B) Party Representatives. Representatives of record for a party in the proceeding.

(C) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

(D) In-House Counsel. In-house counsel of a party.

(E) Other Employees of a Party. Employees, consultants or other persons performing work for a party, other than in-house counsel and in-house counsel's support staff, who sign the Acknowledgement shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

(F) The Office. Employees and representatives of the Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their

clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

(G) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

3. The “CONFIDENTIAL OUTSIDE COUNSEL ONLY” designation is reserved for confidential information that contains or reflects information that is extremely confidential and/or sensitive in nature and disclosure of which to another party or nonparty would create a substantial risk of serious and immediate harm to the producing party that could not be avoided by less restrictive means. Such CONFIDENTIAL OUTSIDE COUNSEL ONLY information may include: (a) marketing, financial, sales, web traffic, research and development, or technical, data or information; (b) commercially sensitive competitive information, including, without limitation, information obtained from a nonparty pursuant to a current Nondisclosure Agreement ("NDA"); (c) information or data relating to future products not yet commercially released and/or strategic plans; and, (d) commercial

agreements, settlement agreements or settlement communications, the disclosure of which is likely to cause serious and immediate harm to the competitive position of the producing party. Documents marked CONFIDENTIAL OUTSIDE ATTORNEYS' EYES ONLY, HIGHLY CONFIDENTIAL or RESTRICTED CONFIDENTIAL shall be treated as if marked CONFIDENTIAL OUTSIDE COUNSEL ONLY. In determining whether information should be designated as CONFIDENTIAL OUTSIDE COUNSEL ONLY, each party agrees to use such designation only in good faith.

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5. Persons receiving confidential information under either of the above designations shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

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(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

46. Persons receiving confidential information [under either of the above designations](#) shall use the following procedures to maintain the confidentiality of the information:

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shall be treated as confidential and remain under seal, unless, upon motion of a party and after a hearing on the issue, or sua sponte, the Board determines that the documents or information do not to qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless, upon motion of a party and after a hearing on the issue, or sua sponte, the Board determines that some or all of the redacted information does not qualify for confidential treatment.

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personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

Dated:

By: _____