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Paper 21
Entered: October 4, 2018

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 IPR2018-00344
Patent 7,047,196 B2

Before JAMESON LEE, ROBERT L. KINDER, and
ALEX S. YAP, *Administrative Patent Judges*

YAP, *Administrative Patent Judge*.

ORDER

Granting Joint Motion for Entry of Modified Protective Order
Denying Patent Owner's Motion to Seal
35 U.S.C. § 316; 37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

On August 30, 2018, and September 27, 2018, Patent Owner filed a Joint Motion for Entry of Modified Protective Order and a Motion to Seal, respectively. Papers 17–18. Petitioner has filed no opposition. For reasons set forth below, with respect to the requested sealing of Exhibits 2022, 2023, and 2031, the Motion to Seal is *denied*, without prejudice to Patent Owner filing a renewed motion to seal within two weeks of the date of this decision. With regard to entry of the modified protective order, the Joint Motion for Entry of Modified Protective Order is *granted*.

Patent Owner, as the moving party, bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). Patent Owner must show "good cause" for sealing Exhibits 2022, 2023, and 2031. 37 C.F.R. § 42.54(a). We direct the parties to prior Board decisions for guidance on how to establish "good cause" to seal a document or thing in an *inter partes* review. *See Argentum Pharm. LLC v. Alcon Research Ltd.*, Case IPR2017-01053 (PTAB Jan. 19, 2018) (Paper 27, 3–4) ; *Garmin Int'l v. Cuozzo Speed Techs., LLC*, Case IPR2012-00001 (PTAB Mar. 14, 2013) (Paper 34); *Corning Optical Communications RF, LLC, v. PPC Broadband, Inc.*, Case IPR2014-00440 (PTAB April 6, 14, and 17, 2015) (Papers 46, 47, 49).

We determine that the Motion to Seal fails to show "good cause" for sealing Exhibits 2022, 2023, and 2031. 37 C.F.R. § 42.54(a). Exhibits 2022, 2023, and 2031 will be provisionally sealed until we decide Patent Owner's renewed motion, if a renewed motion is timely filed, or until two weeks have expired without Patent Owner filing a renewed motion.

II. DISCUSSION

There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an inter partes review, which determines the patentability of claims in an issued patent and therefore affects the rights of the public. *Garmin Int'l*, Paper 27, 1–2. In that regard, note the Office Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012), which 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.
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> * * *
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> 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.

It is certainly the case that the moving party must establish that the information sought to be sealed is confidential information. But that is not all the moving party has to show. Essential to establishing good cause for sealing is to show that a balance of the following three considerations favors sealing the material: (1) the public's interest in maintaining a complete and understandable record, (2) the harm to a party, by disclosure of the information sought to be sealed, and (3) the need of either party to rely specifically on the information at issue. *See Corning Optical Communications RF, LLC*, Paper 47, 3.

In this case, the Motion to Seal completely omits addressing whether, and to what extent, the public would need to see the information sought to be sealed, in connection with any substantive matter in the case, to arrive at a

complete and understandable record in support of any Board decision on the Petition. Patent Owner has presented no balancing, whatsoever, of the above-noted three considerations. Instead, the Patent Owner establishes at most only that some of the information sought to be sealed is confidential to one or more of the parties. That, however, constitutes merely a starting point of the analysis for a motion to seal.

Also, it appears from the Motion to Seal that the entirety of Exhibits 2022, 2023, and 2031 do not constitute confidential information. For example, with regard to Exhibit 2022, Patent Owner points to Petitioner's assertion that Exhibit 2022 "*contains* certain confidential business information, the public disclosure of which could cause Comcast irreparable harm." Paper 18, 2. It is axiomatic that information that is not confidential should not be sealed. Patent Owner is not entitled to seal the entirety of Exhibit 2022 simply on the basis that portions of the exhibit constitute confidential information. We note that Patent Owner also has not identified what portion of the exhibit constitutes confidential information.

In any renewed motion to seal, Patent Owner must specifically identify those parts of Exhibits 2022, 2023, and 2031 that allegedly constitute confidential information. Also, in any renewed motion to seal, Patent Owner shall explain in what manner or for what purpose the Patent Owner's Response (Paper 20) has relied on Exhibits 2022, 2023, and 2031, preferably including a reference to specific page numbers in the Patent Owner's Response. Further, in any renewed motion to seal, Patent Owner shall explain why a balancing of the three considerations noted above favors sealing the information sought to be sealed. Petitioner is also authorized to file its own motion to seal or the Parties may file a joint motion to seal.

ORDER

It is, therefore,

ORDERED that Patent Owner's Motion to Seal, to the extent it seeks sealing of Exhibits 2022, 2023, and 2031, is *denied*;

FURTHER ORDERED that the Parties' Joint Motion for Entry of Modified Protective Order, is *granted*;

FURTHER ORDERED that within two weeks from the date of this decision, Patent Owner and/or Petitioner may re-file a motion to seal with regard to Exhibits 2022, 2023, and 2031 or any part thereof;

FURTHER ORDERED that if a party files a motion to seal directed to Exhibits 2022, 2023, and 2031 or any part thereof, the non-moving party has one week from the filing of the moving party's filed motion to file an opposition, and the moving party has one week from the filing of the non-moving party's opposition to file a reply.

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