UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COMCAST CABLE COMMUNICATIONS, LLC
Petitioner

v.

PROMPTU SYSTEMS CORPORATION
Patent Owner

_____

Case IPR2018-00344
Patent No. 7,047,196

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PETITIONER'S MOTION TO SEAL

EXHIBITS 2022, 2023, AND 2031

I. INTRODUCTION

Pursuant to the Board's order dated October 4, 2018 (Paper 21) and the protective order approved by the Board (*see* Paper 17 at Appx. A), petitioner Comcast Cable Communications, LLC hereby moves to seal Exhibits 2022, 2023, and 2031 filed in support of Patent Owner's Response (Paper 20).

Patent Owner filed a motion to seal Exhibits 2022, 2023, and 2031 concurrent with its response to the petition. The Board denied the motion but stated that the exhibits would be provisionally sealed and authorized Patent Owner or Petitioner to file a further motion to seal them. Paper 21 at 2, 5. In response to the Board's order, Petitioner submits this motion along with redacted versions of Exhibits 2022, 2023, and 2031 filed in the public record (*see* Exhibits 1020, 1021, and 1022).

The redacted portions of Exhibits 2022, 2023, and 2031 are confidential, and there exists "good cause" to maintain the confidentiality of those portions of the documents as required by 37 C.F.R. § 42.54(a). As discussed further below, the redacted material is not relevant to the patentability of the challenged claims and the public therefore has no interest in accessing that information. The redactions are also limited to confidential information that, if disclosed, would harm Petitioner, and neither party relies on the specific information redacted from any of these exhibits. The unredacted exhibits should therefore be sealed.

Petitioner has conferred with Patent Owner, and Patent Owner does not oppose Petitioner's motion to seal Exhibits 2022, 2023, and 2031.

II. EXHIBITS 2022, 2023, AND 2031 ARE CONFIDENTIAL

The Office Patent Trial Practice Guide provides that "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." 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). Those 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." *Id*. (citing 37 C.F.R. §42.54). The three exhibits at issue here are confidential and have been treated as such in the related litigation.

Exhibit 2022 is a "License and Development Agreement" between Comcast IP Holdings I, LLC and Comcast Corporation, on the one hand, and AgileTV Corporation, on the other hand, under which Comcast evaluated and ultimately rejected the voice recognition product offered by AgileTV. *See* Ex. 2022 at 3. Exhibit 2023 is a "Marketing Trial Agreement for Voice Activated Television Control Service" between Comcast Cable Communications Management, LLC and AgileTV Corporation, under which Comcast and AgileTV performed field tests and trials for the rejected AgileTV product. Ex. 2023 at 1. Exhibit 2031 is a

Comcast presentation titled "AgileTV Update," and describes the financial, marketing, and technical evaluations and projections for the trial of the AgileTV product as well as usability studies and metrics for voice control more generally.

These documents have remained confidential both in the related litigation and in this proceeding. Exhibits 2022 and 2023 were initially filed in the related litigation under seal accompanying a motion in accordance with a sealing order granted by the district court. All three exhibits were subsequently produced and designated for outside counsel only by agreement between the parties and consistent with the "Confidential Outside Counsel Only" designation in the protective order subsequently entered in the related litigation. Patent Owner filed Exhibits 2022, 2023, and 2031 under seal in this proceeding, and the Board ordered that they would remain provisionally sealed pending resolution of a further motion to seal. Paper 21 at 2, 5.

III. THERE IS "GOOD CAUSE" TO SEAL EXHIBITS 2022, 2023, AND 2031 WITH REDACTED VERSIONS IN THE PUBLIC RECORD

As the Board noted in its order: "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." Paper 21 at 3 (citing *Corning Optical Communications RF,*

LLC v. PPC Broadband, Inc., IPR2014-00440, Paper 47 at 3 (PTAB April 14, 2015)). As discussed in more detail below, the public's interest in maintaining a complete and understandable record is unaffected by the proposed redactions; Petitioner will be harmed if the information sought to be sealed, which includes confidential business practices, often-negotiated contractual terms, and financial information, is disclosed; and neither party relies specifically on the information contained in the proposed redactions. Accordingly, there is good cause to seal the redacted information. *See, e.g., Unified Patents Inc. v. Dragon Intellectual Property, LLC*, IPR2013-01252, Paper 40 at 7 (PTAB Feb. 27, 2015) (finding good cause to keep financial information under seal); *Activision Blizzard, Inc. v. Acceleration Bay, LLC*, 2017 WL 4118057, at *1 (PTAB Sept. 15, 2017) (finding good cause to seal information regarding research and development efforts and licensing practices); *CaptionCall, L.L.C., et al. v. Ultratec, Inc.*, IPR2015-00636, Paper 97 at 19-20 (PTAB Sept. 7, 2016) (finding good cause to seal competitive and financial information); *Xactware Solutions, Inc. v. Eagle View Technologies, Inc.*, IPR2016-00589, IPR2016-00590, IPR2016-00591, IPR2016-00592, Paper 39 at 3 (PTAB Nov. 23, 2016) (finding good cause to seal financial data and customer surveys); *Polygroup Limited (MCO) v. Willis Electric Company, Ltd.*, 2018 WL 1308281, at *2 (PTAB March 12, 2018) (granting motion to seal because

disclosure of information "could place Petitioner at a competitive disadvantage, with respect to other customers or to other competitors.").

1. The Public's Interest in Maintaining a Complete and Understandable Record Is Unaffected by the Proposed Redactions to Exhibits 2022, 2023, and 2031

The information in these documents post-dates the priority date of the challenged patent and is cited only in connection with Patent Owner's arguments based on "secondary considerations." Paper 20 at 2, 38-40. But because Comcast evaluated and then rejected the AgileTV product, evidence showing that the evaluation occurred does not support any objective indicia of non-obviousness. At most, this evidence provides context for Patent Owner's secondary considerations arguments, but the documents themselves are unnecessary to understand or weigh those arguments.

Patent Owner cites very few specific portions of Exhibits 2022, 2023, and 2031. Indeed, Patent Owner cites Exhibit 2022 and 2023 in its response merely to show that the parties entered into these agreements (Paper 20 at 38) and to show that it provided certain license rights to Comcast in connection with its evaluation (Paper 20 at 38-39). With respect to Exhibit 2022, Patent Owner specifically cites Sections 1(a), 1(b), and 1(c) of Exhibit 2022. Paper 20 at 39. Sections 1(a) and 1(b) are partially redacted, but Patent Owner does not cite any particular language (redacted or not) in those sections. Rather, Patent Owner cites those two sections

simply to show that "AgileTV also granted Comcast the option to license additional patent rights beyond the scope and duration of the field trials." Paper 20 at 39. But Comcast never exercised the option to license additional patent rights so these provisions add nothing to any argument about patentability. Patent Owner does not cite to any specific sections or language of Exhibit 2023. And Patent Owner's only specific citation to Exhibit 2031 refers to text on page 27 (Paper 20 at 2, 40) that is not redacted. *See* Exhibit 2031 (sealed version) at 27 and Exhibit 1022 (redacted version) at 27. Patent Owner's secondary considerations arguments are not specifically based on anything redacted from the three exhibits, and the redacted information is unnecessary for the public to understand those arguments.

2. Petitioner Would Be Harmed by Disclosure of the Information in Exhibits 2022, 2023, and 2031 Sought to Be Sealed

Petitioner has proposed to redact only those specific portions of Exhibits 2022, 2023, and 2031 where disclosure is likely to cause it harm. The following identifies and describes the specific proposed redactions and related harm posed by disclosure of the redacted information:

- Exhibit 2022 at 3-9, 16-19[1]: The redacted portions on these pages relate to intellectual property license terms (including payment terms) and

[1] All exhibit page citations are to the consecutive numbering added to each exhibit for purposes of this proceeding.

procedures for Comcast to exercise options to license certain patent rights, and intellectual property rights. *See* Exhibit 2022 (sealed version) and Exhibit 1020 (redacted version) at 3-9, 16-19. Disclosure of this language is likely to harm Petitioner in negotiations with other third parties where similar terms are at issue. For instance, a third party in a future negotiation could attempt to hold Petitioner to terms as accepted in this agreement rather than different, potentially more favorable, terms. Further, disclosure would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2022 at 9-10, 11-13: The redacted portions on these pages relate to the statement of work to be performed by AgileTV and terms and procedures that apply to AgileTV's performance, including if it failed to perform as required by the agreement. *See* Exhibits 2022 and 1020 at 9-10, 11-13. Disclosure of this language is likely to harm Petitioner in negotiations with other third parties where similar terms are at issue and would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2022 at 13, 19-22, 43-44: The redacted portions on these pages relate to specific financial terms, including dollar amounts to be paid under the agreement. *See* Exhibits 2022 and 1020 at 13, 19-22, 43-44. This information is highly confidential and its disclosure would harm Petitioner in similar

negotiations with other third parties. Further, disclosure would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2022 at 13-14: The redactions that begin at the end of page 13 and end at the middle of page 14 relate to matters for which AgileTV was required to obtain Comcast's affirmative written consent. *See* Exhibits 2022 and 1020 at 13-14. Disclosure of this information would harm Petitioner in similar negotiations with other third parties involving similar terms. Further, disclosure would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2022 at 14-15: The redactions beginning at the bottom of page 14 relate to the conditions and procedures that would apply to project termination. *See* Exhibits 2022 and 1020 at 14-15. Again, disclosure of this language is likely to harm Petitioner in negotiations with other third parties where similar terms are at issue and would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2022 at 22-23, 28: The redacted portions relate to audit rights and procedures under the agreement. *See* Exhibits 2022 and 1020 at 22-23, 28. Disclosure of this language is likely to harm Petitioner in negotiations with other third parties where similar terms regarding audit rights are at issue and would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2022 at 24-27: The redacted portions of these pages relate to indemnification terms and procedures and to limitations of liability under the agreement. *See* Exhibits 2022 and 1020 at 24-27. Disclosure of this language is likely to harm Petitioner in negotiations with other third parties where similar terms regarding indemnification are at issue and would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2022 at 29: The redacted portion describes specific obligations, including financial obligations, undertaken by Comcast's parent corporation. *See* Exhibits 2022 and 1020 at 29. Disclosure of this language is likely to harm Petitioner in negotiations with other third parties where a similar term is at issue. Further, disclosure would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2022 at 34-35: The redacted portions relate to arbitration terms and procedures under the agreement. *See* Exhibits 2022 and 1020 at 34-35. Disclosure of this language is likely to harm Petitioner in negotiations with other third parties where similar terms regarding arbitration are at issue and would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2022 at 36: The redacted portion relates to the confidentiality obligations between Comcast and AgileTV. *See* Exhibits 2022 and 1020 at 36. Disclosure of this language is likely to harm Petitioner in negotiations with other

third parties where similar terms regarding arbitration are at issue and would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2022 at 44, 46-49: The redacted portions relate to certain defined terms in the agreement. *See* Exhibits 2022 and 1020 at 44, 46-49. Disclosure of these definitions is likely to harm Petitioner in negotiations with other third parties where similar terms are at issue and would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2022 at 32-33, 38-40, 73: The redacted portions are limited to the identities of certain Comcast and AgileTV employees and to certain contact information. *See* Exhibits 2022 and 1020 at 32-33, 38-40, 73. Disclosure could implicate privacy rights and could lead to improper or incorrect communications with Comcast.

- Exhibit 2022 at 67, 74: The redacted portions merely remove the names, email addresses, and job titles of certain Iron Mountain Intellectual Property Management employees under an "Escrow Service Agreement." *See* Exhibits 2022 and 1020 at 67, 74. Disclosure could impact their privacy.

- Exhibit 2023 at 9: The redacted portions of Exhibit 2023 relate to confidentiality terms under the agreement. *See* Exhibit 2023 (version under seal) at 9 and Exhibit 1021 (redacted version) at 9. Disclosure of this language is likely to harm Petitioner in negotiations with other third parties where similar terms are at

issue. Further, disclosure would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2023 at 12-14: The redacted portions relate to indemnification terms and procedures and to limitations of liability under the agreement. *See* Exhibits 2023 and 1021 at 12-14. Again, disclosure of this language is likely to harm Petitioner in negotiations with other third parties where similar terms are at issue and would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2023 at 14: The redacted portion in the middle of this page relates to the terms and procedures relating to dispute resolution. *See* Exhibits 2023 and 1021 at 14. Disclosure of this language is likely to harm Petitioner in negotiations with other third parties where similar terms are at issue and would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2023 at 14-15: The redacted portion beginning on page 14 and continuing to the top of page 15 relates to required insurance coverage under the agreement, including specific types and levels of required coverage. *See* Exhibits 2023 and 1021 at 14-15. Disclosure of this information is likely to harm Petitioner in negotiations with other third parties involving similar contractual terms and would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2023 at 15, 17, 18, 25: The redacted portions at the bottom of page 15, middle of page 17, middle of page 18, and page 25 relate to the identification of certain Comcast and AgileTV employees. *See* Exhibits 2023 and 1021 at 15, 17, 18, 25. Disclosure of this information could impact their privacy.

- Exhibit 2023 at 21-24: The redacted portions describe the roles and responsibilities of the parties in conducting the marketing trial under the agreement and the research objectives of the studies to be performed pursuant to the agreement. *See* Exhibits 2023 and 1021 at 21-24. Disclosure of this information is likely to harm Petitioner in negotiations with other third parties involving similar contractual terms and would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2023 at 25-28: The redacted portions describe technical requirements and equipment relating to the voice recognition system under trial pursuant to the agreement. *See* Exhibits 2023 and 1021 at 25-28. Disclosure of this language would likely harm Petitioner in negotiations with other third parties where similar terms or trials are at issue and would reveal confidential information about Comcast's business and technical details about its systems to its competitors.

- Exhibit 2031 at 2: The redacted portions of this page relate to the results of market surveys, including market reactions to pricing. *See* Exhibit 2031 (sealed version) at 2 and Exhibit 1022 (redacted version) at 2. This information is

confidential and its disclosure is likely to harm Petitioner by giving competitors insight into Petitioner's market analyses, thus giving them a competitive advantage. Disclosure would also reveal confidential information about Comcast's business to its competitors.

- Exhibit 2031 at 4-5, 24: The redacted portions relate to the financial terms, including specific dollar amounts, related to the trial. *See* Exhibits 2031 and 1022 at 4-5, 24. Such financial information is highly confidential and disclosure would likely harm Petitioner in negotiations with other third parties where similar financial terms are at issue. Further, disclosure would reveal confidential information about Comcast's business to its competitors.

- Exhibit 2023 at 6: The redactions relate to funding documentation, including details of the funding. *See* Exhibits 2031 and 1022 at 6. This information is confidential and its disclosure is likely to harm Petitioner in similar negotiations with other third parties who could use this information to demand more favorable payment terms from Petitioner. Disclosure would also reveal confidential information about Comcast's business to its competitors.

- Exhibit 2031 at 14: The redacted portions remove the names of certain Comcast and AgileTV employees. *See* Exhibits 2031 and 1022 at 14. Disclosure of this information could impact their privacy.

- Exhibit 2031 at 17: The redacted portions include information relating to the critical internal Comcast events, including legal work, that was required before the trial could commence. *See* Exhibits 2031 and 1022 at 17. Disclosure would harm Petitioner in similar negotiations with other third parties regarding similar terms or market trials. Disclosure would also reveal confidential information about Comcast's business to its competitors.

- Exhibit 2031 at 18: The redacted information relates to the marketing plan for the trial evaluation of the AgileTV product. *See* Exhibits 2031 and 1022 at 17. Disclosure would harm Petitioner in similar negotiations with other third parties regarding similar marketing trials. Disclosure would also reveal confidential information about Comcast's business to its competitors.

3. Neither Party Needs to Rely Specifically on the Information in Exhibits 2022, 2023, and 2031 Sought to Be Sealed

Patent Owner does not quote or rely on any specific language in Exhibits 2022, 2023, or 2031 that Petitioner proposes redacting from the documents. Patent Owner therefore does not need to specifically rely on any of the redacted information. Petitioner did not file these exhibits in support of its petition and does not intend to rely on any specific language from the redacted portions of the documents. Thus, neither party needs to rely specifically on the information in Exhibits 2022, 2023, or 2031 that Petitioner seeks to have sealed.

B. In the Alternative, the Board Should Keep the Exhibits Sealed Pending Its Final Written Decision and Further Motion to Expunge the Confidential Information

Good cause exists to keep Exhibits 2022, 2023, and 2031 under seal. If, however, the Board believes that the current record is insufficient for it to fully evaluate this motion to seal, and in particular believes that the current record is insufficient for it to evaluate the public's need to see the redacted material, Petitioner respectfully requests that the Board leave Exhibits 2022, 2023, and 2031 in the non-public record until after issuing its Final Written Decision, at which point Petitioner will file a motion to expunge Exhibits 2022, 2023, and 2031 from the record pursuant to 37 C.F.R. § 42.56.

IV. CONCLUSION

Exhibits 2022, 2023, and 2031 are confidential and "good cause" exists to seal the specific portions of those exhibits identified by Petitioner. Therefore, Petitioner respectfully requests that the Board enter an order sealing those three exhibits and that only redacted versions of the exhibits (i.e., Exhibits 1020, 1021, and 1022) appear in the public record.

Dated: October 18, 2018

Respectfully submitted,

By: /s/ *James L. Day*
James L. Day
Registration No. 72,681

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2018, the foregoing **PETITIONER'S MOTION TO SEAL EXHIBITS 2022, 2023, and 2031** and all documents filed with it were served by electronic mail:

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October 18, 2018
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