**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

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

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# PETITIONER'S MOTION TO SEAL

# EXHIBIT 1024

## I. INTRODUCTION

Pursuant to the Board's order dated September 28, 2018 (Paper 22) and the protective order approved by the Board (*see* Paper 17 at Appx. A), petitioner Comcast Cable Communications, LLC hereby moves to seal Exhibit 1024 filed in support of Petitioner's Reply to Patent Owner's Response (Paper 29).

Exhibit 1024 contains excerpts from the transcript of the deposition of Paul Cook who was deposed over a period of three days on October 30, October 31, and November 1, 2018. Certain passages of the transcript disclose information that is confidential, and there exists "good cause" to maintain the confidentiality of those portions of the transcript as required by 37 C.F.R. § 42.54(a). The confidential information is not relevant to the patentability of the challenged claims and the public therefore has no interest in accessing it. Petitioner proposes filing a redacted version of the exhibit in the public record and specifically identifies below the passages (by page and line number) that it proposes redacting.

Petitioner contacted Patent Owner and confirmed that Patent Owner does not oppose Petitioner's motion to seal Exhibit 1024.

## II. EXHIBIT 1024 IS 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 information at issue here is confidential and has been treated as such in the related litigation and this proceeding.

Pursuant to the protective order in this matter and in the related litigation, counsel for Comcast identified specific page/lines of the Cook deposition transcript as "Confidential" in a written communication to Patent Owner's counsel on December 3, 2018. In addition, Comcast filed the exhibit for viewing by the Board and Parties only. Thus, Comcast has taken steps necessary to maintain the confidentiality of those specific passages.

## III. THERE IS "GOOD CAUSE" TO SEAL EXHIBIT 1024 AND REDACT SPECIFIC PASSAGES FROM A PUBLIC VERSION

As the Board has noted in this matter: "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 22 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 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 information Comcast seeks to redact. *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 Exhibit 1024

Comcast proposes redacting references in Exhibit 1024 to specific dollar amounts negotiated and/or agreed to by the parties in connection with a "marketing trial" of Patent Owner's product and related negotiations between the parties. None of the specific dollar amounts disclosed in the exhibit are cited in Comcast's reply brief or elsewhere in the parties' briefing on the merits. Thus, the public will have no interest in this specific confidential information with regard to the patentability of the challenged claims.

### 2. Petitioner Would Be Harmed by Disclosure of the Information in Exhibit 1024 Sought to Be Sealed

Petitioner has proposed to redact only those specific portions of Exhibit 1024 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 Comcast proposes to redact:

- Page 117, line 15: This line discloses the amount of a proposed patent license agreement between the parties. This information is confidential and its disclosure would harm Petitioner in similar negotiations involving patent or other licenses with other third parties.

- Page 156, lines 8-16: These lines disclose the specific amount of consideration under the License and Development Agreement entered by the

parties and additional confidential terms of that agreement. Disclosure of this information is likely to harm Petitioner in negotiations with other third parties involving similar agreements. For instance, a third party in a future negotiation could attempt to hold Petitioner to similar terms rather than different, potentially more favorable, terms.

- Page 160, line 21: This line discloses the amount of consideration under the License and Development Agreement entered by the parties. Disclosure of this information is likely to harm Petitioner in negotiations with other third parties involving similar agreements. For instance, a third party in a future negotiation could attempt to hold Petitioner to similar terms rather than different, potentially more favorable, terms.

- Page 160, line 24: This line discloses the amount of consideration under the License and Development Agreement entered by the parties. Disclosure of this information is likely to harm Petitioner in negotiations with other third parties involving similar agreements. For instance, a third party in a future negotiation could attempt to hold Petitioner to similar terms rather than different, potentially more favorable, terms.

- Page 161, line 4: This line discloses the amount of a proposed patent license agreement between the parties. This information is confidential and its

disclosure would harm Petitioner in similar negotiations involving patent or other licenses with other third parties.

- Page 161, lines 9-10: These lines discloses the amount of consideration under the License and Development Agreement entered by the parties and the amount of a proposed patent license agreement between the parties. Disclosure of this information is likely to harm Petitioner in negotiations with other third parties involving similar agreements. For instance, a third party in a future negotiation could attempt to hold Petitioner to similar terms rather than different, potentially more favorable, terms.

- Page 161, line 22: This line discloses the amount of consideration under the License and Development Agreement entered by the parties. Disclosure of this information is likely to harm Petitioner in negotiations with other third parties involving similar agreements. For instance, a third party in a future negotiation could attempt to hold Petitioner to similar terms rather than different, potentially more favorable, terms.

### 3. Neither Party Needs to Rely Specifically on the Information in Exhibit 1024 Sought to Be Sealed

Neither parties states the specific dollar amounts Petitioner proposes redacting from the documents in any briefing on the merits. Thus, neither party needs to rely specifically on the information in Exhibit 1024 that Petitioner seeks to have sealed.

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

Good cause exists to keep Exhibit 1024 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 Exhibit 1024 in the non-public record until after issuing its Final Written Decision, at which point Petitioner will file a motion to expunge Exhibit 1024 from the record pursuant to 37 C.F.R. § 42.56.

## IV. CONCLUSION

Exhibit 1024 contains confidential and competitively sensitive information, and "good cause" exists to seal the specific portions of those exhibits identified herein by Petitioner. Therefore, Petitioner respectfully requests that the Board enter an order sealing Exhibit 1024 and permitting Petitioner to file a redacted version in the public record.

Dated: December 13, 2018

Respectfully submitted,

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

**CERTIFICATE OF SERVICE**

I hereby certify that on December 13, 2018, the foregoing **PETITIONER'S MOTION TO SEAL EXHIBIT 1024** was served by electronic mail:

Joshua L. Goldberg
joshua.goldberg@finnegan.com
Jacob A. Schroeder
jacob.schroeder@finnegan.com
Cory C. Bell
cory.bell@finnegan.com
Daniel Klodowski
daniel.klodowski@finnegan.com
John S. Ferrell
jsferrell@carrferrell.com
Wade C. Yamazaki
wyamazaki@carrferrell.com

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

December 13, 2018
235 Montgomery Street
San Francisco, CA