

**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 1030**

## **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 Exhibit 1030 filed in support of Petitioner's Opposition to Patent Owner's Motion to Exclude (Paper 46).

Exhibit 1030 contains 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 previously filed excerpts from the deposition of Mr. Cook along with a motion to seal similar confidential information in the transcript, which Patent Owner did not oppose.

## **II. EXHIBIT 1030 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 1030 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 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 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 1030**

Comcast proposes redacting references in Exhibit 1030 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 Petition or Reply or in Patent Owner’s Response. 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 1030 Sought to Be Sealed**

Petitioner has proposed to redact only those specific portions of Exhibit 1030 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:

- Ex. 1030 at 156:8, 160:21, 160:24, 161:9, 161:22, 365:22, 369:22, 370:7: These lines in the deposition transcript disclose the specific amount of a

loan Comcast paid to AgileTV in connection with a limited marketing trial of AgileTV's product. Disclosure of this information is likely to harm Comcast in negotiations with other third parties involving similar agreements. For instance, a third party vendor in a future negotiation could attempt to hold Petitioner to similar terms rather than different, potentially more favorable, terms.

- Ex. 1030 at 110:1, 112:9, 117:15, 134:21, 137:15, 138:7, 138:8, 139:7, 140:8, 144:5, 146:15, 146:22, 150:21, 150:25, 153:8, 161:4, 161:10, 162:4, 295:20, 364:23, 365:15, 365:21, 356:25: These lines in the deposition transcript disclose specific dollar amounts in negotiations between the parties related to Comcast's marketing trial of the AgileTV product. This information is confidential and its disclosure would harm Petitioner in similar negotiations involving patent or other licenses with other third parties.

**3. Neither Party Needs to Rely Specifically on the Information in Exhibit 1030 Sought to Be Sealed**

Neither parties relies on the specific dollar amounts Petitioner proposes redacting in their arguments on the merits. Thus, neither party needs to rely specifically on the information in Exhibit 1030 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 1030 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 1030 in the non-public record until after issuing its Final Written Decision, at which point Petitioner will file a motion to expunge Exhibit 1030 from the record pursuant to 37 C.F.R. § 42.56.

#### **IV. CONCLUSION**

Exhibit 1030 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 1030 and permitting Petitioner to file a redacted version in the public record.

Dated: January 10, 2019

Respectfully submitted,

By: /s/ James L. Day

James L. Day

Registration No. 72,681

**CERTIFICATE OF SERVICE**

I hereby certify that on January 10, 2019, the foregoing **PETITIONER'S  
MOTION TO SEAL EXHIBIT 1030** and associated documents were served by  
electronic mail:

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January 10, 2019  
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