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 REPLY IN SUPPORT OF ITS MOTION TO SEAL

PATENT OWNER'S SUR-REPLY

Although Patent Owner does not oppose Petitioner's motion to seal the sur-reply brief, it provides a "response" to the motion arguing that it should be denied. The Board directed Patent Owner to provide a response "inform[ing] the Board whether the information sought to be sealed by Petitioner constitutes confidential information or if the information is in the public domain." IPR2018-00340, Paper 40 at 2. Patent Owner's response confirms that the specific dollar amount of the loan Comcast made to AgileTV, which is the only information Petitioner seeks to have sealed (as opposed to any other fact or substantive aspect of Comcast's dealings with AgileTV), should be treated as confidential.

Patent Owner does not identify any public source for the loan amount and instead cites its own allegations in the district court complaint that do not reveal the amount of the loan. Paper 44 at 1-3, 10-11. Patent Owner alleged in the complaint that Comcast agreed to invest a different dollar amount in AgileTV, but Comcast never made such an investment and Petitioner is not seeking to seal the alleged investment amount discussed in the complaint. Petitioner also argues that Mr. Cook's deposition testimony made the loan amount public. Paper 44 at 10-11. But his testimony was provided in a conference room before attorneys bound by protective orders–it was not a public statement.

Patent Owner also argues that there is no "good cause" to seal the sur-reply, but does not address any of the factors relevant to that determination. Paper 44 at

11-13. Instead, Patent Owner takes the opportunity to reargue its case and to assert that there is something inconsistent in Comcast's position that the loan amount is both confidential and irrelevant. Yet it is precisely because the loan amount is confidential and irrelevant that it should be sealed. Patent Owner's inability to identify any public source of the loan amount confirms that it is confidential, and it does not suggest in its response that the amount is relevant to any issue in this proceeding. Thus, Patent Owner's response effectively confirms that "good cause" exists to seal the dollar amount of the loan.

Finally, though the Board directed Patent Owner only to address the confidentiality of the loan amount, Patent Owner also raises a number of procedural arguments that have nothing to do with the confidentiality of the information. For instance, Patent Owner feigns confusion over Petitioner's designation of the information as "Confidential" though it never requested any clarification from Petitioner and surely understood that the designation refers to the lower-level of protection in both the district court and PTAB protective orders (as opposed to the higher level limiting disclosure to attorneys only). Patent Owner's further argument that the protective order may only be invoked by a "producing" party simply ignores the fact that Comcast produced the loan agreement in the district court case and that Mr. Cook only learned of that amount through his dealings with Comcast as AgileTV's CEO (i.e., it is not as though he came by the

information from a source independent of these dealings with Comcast). Patent Owner's procedural arguments are meritless and fail to address the question posed by the Board in any event.

Dated: January 14, 2019

Respectfully submitted,

By: /s/ *James L. Day*

James L. Day
Registration No. 72,681

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2019, the foregoing **PETITIONER'S REPLY IN SUPPORT OF ITS MOTION TO SEAL PATENT OWNER'S SUR-REPLY** was served by electronic mail:

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January 14, 2019
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