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Paper 58
Entered: June 28, 2019

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
Decision on Petitioner's Motions to Seal
37 C.F.R. §§ 42.14 and 42.54

I. INTRODUCTION

Comcast Cable Communications, LLC ("Petitioner") filed four motions to seal various exhibits and materials in the current proceeding pursuant to 37 C.F.R. §§ 42.14 and 42.54. *See* Papers 23, 31, 41, and 48.

A. First Motion to Seal

Through the first Motion to Seal, Petitioner seeks to seal portions of Exhibits 2022, 2023, and 2031 and represents that Patent Owner, Promptu Systems Corp., does not oppose the motion. Paper 23, 2. Corresponding redacted exhibits have been filed as exhibits 1020, 1021, and 1022. Exhibit 2020 is a "License and Development Agreement" between Comcast IP Holdings I, LLC and Comcast Corporation, and AgileTV Corporation. Paper 23, 2; *see* Ex. 2022. Exhibit 2023 is a "Marketing Trial Agreement for Voice Activated Television Control Service" between Comcast Cable Communications Management, LLC and AgileTV Corporation. Paper 23, 2; *see* Ex. 2023. 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." Paper 23, 3; *see* Ex. 2031. Petitioner certifies that these exhibits contain confidential information that has not been published or otherwise made publicly available. Paper 23, 3. The alleged confidential information were not relied on or referred to in the Final Written Decision. Thus, protecting the alleged confidential material from public disclosure does not harm the public's interest in maintaining a complete and understandable file history. Furthermore, the redactions appear to be limited in extent, and the motion is unopposed. We

determine that good cause exists to grant this motion to seal (Paper 23). 37 C.F.R. § 42.54.

B. Second Motion to Seal

Through the second Motion to Seal, Petitioner seeks to seal portions of Exhibit 1024, which "contains excerpts from the transcript of the deposition of Paul Cook." Paper 31, 1. A corresponding redacted copy of Exhibit 1024 has been filed. *See* Exhibit 1032. Petitioner proposes to seal portions of Exhibit 1024 because those portions "disclose[] the amount of a proposed patent license agreement between the parties" or "the specific amount of consideration under the License and Development Agreement entered by the parties and additional confidential terms of that agreement." Paper 31, 4–6. According to Petitioner, "[n]one 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[, t]hus the public will have no interest in this specific confidential information with regard to the patentability of the challenged claims." Paper 31, 4. In addition, Petitioner contends that the "information is confidential and its disclosure would harm Petitioner in similar negotiations involving patent or other licenses with other third parties." Paper 31, 4–6.

Patent Owner states that "[a]lthough Promptu indicated it does not oppose Comcast's motion to seal, Promptu was ordered . . . that it 'still should inform the Board whether the information sought to be sealed by Petitioner constitutes confidential information or if the information is in the public domain.' *See* IPR2018-00340, Paper 40 at 2." Paper 44, 1. According to Patent Owner, "the information [Petitioner sought to seal] does not constitute confidential information and [that] the information is in the

public domain." *Id*. at 1, 9–11.[1] For example, Promptu's amended complaint in its district court action and "several details regarding Comcast's valuation of Promptu's technology are already in the public domain." *Id*. at 10. Promptu's amended complaint states that "To further encourage Promptu to continue to disclose its proprietary voice recognition technology, Comcast represented it would invest $2 million of capital into Promptu." *Id*. at 2–3 (citing to *Promptu Sys. Corp. v. Comcast Corp.*, Case No. 2:16-CV- 6516-JS (E.D. Pa.), ECF No. 30, ¶ 32). Patent Owner also points to Exhibits 2002 and 2003 in support of its contention. Exhibit 2002 is an AgileTV Corporation Executive Summary and Exhibit 2003 appears to be an AgileTV presentation titled "AgileTV Voice Navigation." In addition, Patent Owner also argues that "the material is already publicly known, by virtue of the information having originated from the mouth of a non-party subject to no obligation of confidentiality." Paper 44, 10–11. According to Patent Owner, Mr. Cook, "Promptu's former CEO and a non-party, [] is no longer under any obligation of confidentiality" and did not designate his testimony as being confidential during his deposition. *Id*. at 7.

In response, Petitioner contends that "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 50, 1. Petitioner also contends that Mr. Cook's testimony "was provided in

[1] Patent Owner also argues that the information is not confidential because Petitioner did not properly designate Ex. 1026 under the protective order. Paper 44, 5–9. We do not find this argument persuasive because Patent Owner does not explain why a protective order, or compliance with a protective order, is a prerequisite to filing a motion to seal.

a conference room before attorneys bound by protective orders[, and is therefore] not a public statement." *Id*.

"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." Office Patent Trial Practice Guide, 77 Fed. Reg. 48760 (August 14, 2012). Here, the alleged confidential information is not relied on or referred to in the Final Written Decision. Thus, a complete and understandable file history does not depend on disclosure of any of the alleged confidential information at issue. Also, the scope of protection sought by Petitioner is limited, *i.e.*, redacting "the amount of a proposed patent license agreement between the parties" and "the specific amount of consideration under the License and Development Agreement entered by the parties and additional confidential terms of that agreement." Paper 31, 4–6. We determine that good cause exists to grant Petitioner's Second Motion to Seal. 37 C.F.R. § 42.54.

C. Third Motion to Seal

Through the Third Motion to Seal, Petitioner seeks to seal portions of Patent Owner's Sur-Reply (Paper 38), which "disclose[] the specific amount Comcast loaned to Patent Owner to conduct trials intended for Patent Owner to demonstrate its AgileTV product to Comcast." Paper 41, 1. A corresponding redacted copy of Patent Owner's Sur-Reply has been filed. *See* Paper 42. Patent Owner states that "[a]lthough Promptu indicated it does not oppose Comcast's motion to seal, Promptu was ordered . . . that it 'still should inform the Board whether the information sought to be sealed by Petitioner constitutes confidential information or if the information is in the public domain.' *See* IPR2018-00340, Paper 40 at 2." Paper 44, 1.

Patent Owner presents the same arguments as discussed above relating to Petitioner's Second Motion to Seal. The alleged confidential information (*i.e.*, "the specific amount Comcast loaned to Patent Owner to conduct trials intended for Patent Owner to demonstrate its AgileTV product to Comcast") is not relied on or referred to in the Final Written Decision. A complete and understandable file history does not depend on disclosure of any of the alleged confidential information at issue. Also, the scope of protection sought by Petitioner is limited, *i.e.*, the specific amount Comcast loaned to Patent Owner to conduct trials intended for Patent Owner to demonstrate its AgileTV product to Comcast. We determine that good cause exists to grant Petitioner's Third Motion to Seal. 37 C.F.R. § 42.54.

D. Fourth Motion to Seal

Through the Fourth Motion to Seal, Petitioner seeks to seal portions of Exhibit 1030, which was "filed in support of Petitioner's Opposition to Patent Owner's Motion to Exclude (Paper 46)." Paper 48, 1. A corresponding redacted copy of Exhibit 1030 has been filed as Exhibit 1032. Petitioner proposes to seal Exhibit portions of 1030 because those portions "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." Paper 48, 4–5. According to Petitioner, "[n]either parties relies on the specific dollar amounts Petitioner proposes redacting in their arguments on the merits [, thus] the public will have no interest in this specific confidential information with regard to the patentability of the challenged claims." *Id*. In addition, Petitioner contends that the "information is confidential and its disclosure would harm Petitioner

in similar negotiations involving patent or other licenses with other third parties." *Id*. at 5. Patent Owner does not file an opposition to this motion.

The alleged confidential information (*i.e.*, "the specific amount of a loan Comcast paid to AgileTV in connection with a limited marketing trial of AgileTV's product" and "the specific dollar amounts in negotiations between the parties related to Comcast's marketing trial of the AgileTV") is not relied on or referred to in the Final Written Decision. A complete and understandable file history does not depend on disclosure of any of the alleged confidential information at issue. Also, the scope of protection sought by Petitioner is limited, *i.e.*, the specific amount Comcast loaned to Patent Owner to conduct trials intended for Patent Owner to demonstrate its AgileTV product to Comcast. Paper 48, 4–5. We determine that good cause exists to grant Petitioner's Fourth Motion to Seal. 37 C.F.R. § 42.54.

ORDER

It is, therefore,

ORDERED that Petitioner's Motion to Seal directed to portions of Exhibits 2022, 2023, and 2031 (Paper 23) is *granted*;

FURTHER ORDERED that Petitioner's Motion to Seal directed to portions of Exhibit 1024 (Paper 31) is *granted*; and

FURTHER ORDERED that Petitioner's Motion to Seal directed to portions of Patent Owner's Sur-Reply (Paper 41) is *granted*; and

FURTHER ORDERED that Petitioner's Motion to Seal directed to portions of Exhibit 1030 (Paper 48) is *granted*.

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