

Filed: January 18, 2019

Filed on behalf of

Patent Owner Cellphone-Mate, Inc. d/b/a SureCall

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WILSON ELECTRONICS, LLC,
Petitioner,

v.

CELLPHONE MATE, INC. d/b/a SURECALL
Patent Owner

Case No. IPR2018-01774
U.S. Patent 9,402,190

**CELLPHONE-MATE, INC. d/b/a SURECALL'S
MOTION FOR A PROTECTIVE ORDER AND
TO SEAL EXHIBITS UNDER 37 C.F.R. § 42.54**

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14, 42.54, and 42.55, Patent Owner Cellphone Mate, Inc. d/b/a/ SureCall (“Patent Owner”) hereby moves for entry of the Protective Order attached below as Addendum A and to seal three exhibits submitted with its Patent Owner Preliminary Response as described herein. Petitioner Wilson Electronics, LLC (“Wilson”) has advised Patent Owner that it does not oppose the motion.

II. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

Patent Owner and Wilson conferred regarding the entry of a protective order in this case. The parties agreed to adopt the Board’s default protective order. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-01 at 48771 (Aug. 14, 2012). Addendum A, attached to this motion, incorporates the terms of the Board’s default protective order. Accordingly, Patent Owner moves for entry of the Protective Order attached below as Addendum A. Patent Owner agrees to abide by the terms of the Protective Order.

**III. GOOD CAUSE EXISTS TO SEAL THREE EXHIBITS ATTACHED
TO THE PATENT OWNER PRELIMINARY RESPONSE**

Pursuant to the Protective Order and 37 C.F.R. §§ 42.54 and 42.55, Patent Owner moves to seal the highly confidential schematics of the printed circuit board for Patent Owner's Force 5 product ("the Schematic"), Ex. 2007. As explained in further the Zhan Declaration, Ex. 2005, Patent Owner confidentially submitted the Schematic to the Federal Communications Commission (the "FCC") on March 13, 2012 and has been maintained it as confidential thereafter. The Schematic discloses the circuitry of Patent Owner's Force 5 product which constitutes non-public trade secret information. *Id.* Patent Owner would be irreparably harmed if the public is permitted to view Patent Owner's trade secrets and then compete with Patent Owner. Further, the information sought to be protected by this motion is not critical to the public's understanding of this administrative process. An additional exhibit, Ex. 2006, is a claim chart that references the Schematic and includes excerpts of the Schematic. Finally, Ex. 2021 is a copy of Patent Owner's confidential sales information from 2012-2017 that includes units sold and gross revenues. That sales information comprises data that Patent Owner does not publicly share, and is also competitively sensitive information.

Patent Owner also served the Schematic and sales information on Wilson in connection with District Court case *Wilson Electronics, LLC v. CellPhone-Mate*,

Inc., d/b/a SureCall, et al., No. 2:17-cv-00305-DB-EJF pending in the District of Utah, Central Division. Patent Owner designated the Schematic “Confidential Information – Attorneys’ Eyes Only” in that case.

Good cause exists to seal the Schematic and Ex. 2006 that references the Schematic, because they are confidential, not available to the public, and their disclosure would irreparably harm Patent Owner. Good cause further exists to seal Ex. 2021, Patent Owner’s sales information, because it is confidential, not available to the public, and contains competitively sensitive information.

IV. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that the Board grant this Motion for Entry of a Protective Order and to Seal and Exhibits.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 18, 2019

By: /Brian C. Claassen/
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Attorneys for Patent Owner
Cellphone-Mate, Inc. d/b/a SureCall

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **CELLPHONE-MATE, INC. d/b/a SURECALL'S MOTION FOR A PROTECTIVE ORDER AND TO SEAL EXHIBITS UNDER 37 C.F.R. § 42.54** is being served on January 18, 2019, via EMAIL pursuant to 37 C.F.R. § 42.6(e), to counsel for Petitioners as addressed below:

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Attorneys for Patent Owner
Cellphone-Mate, Inc. d/b/a SureCall

ADDENDUM A

Stipulated Protective Order

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Patent Owner Cellphone-Mate, Inc. d/b/a SureCall

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STIPULATED PROTECTIVE ORDER

IPR2018-01774

Wilson v. Cellphone-Mate d/b/a SureCall

Petitioner Wilson Electronics, LLC and Patent Owner Cellphone-Mate d/b/a SureCall have stipulated and agreed to adopt and be bound by the Default Protective Order in the Office Patent Trial Practice Guide (77 Fed. Reg. 48771), which is attached hereto as Appendix A.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 18, 2019

By: /Brian C. Claassen/

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Brian C. Claassen, Reg. No. 63,051

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Attorneys for Patent Owner

Cellphone-Mate, Inc. d/b/a SureCall

IPR2018-01774

Wilson v. Cellphone-Mate d/b/a SureCall

APPENDIX A

DEFAULT PROTECTIVE ORDER

77 Fed. Reg. 48771

(f) *Duty To Retain Acknowledgements.* Each party to the proceeding shall maintain a signed Acknowledgement from each person acting on its behalf who obtains access to confidential information after signing an Acknowledgement, as set forth herein, and shall produce such Acknowledgements to the Office upon request.

(g) *Motion to Seal.* A party may file an opposition to the motion that may include a request that the terms of the proposed Protective Order be modified including limiting the persons who are entitled to access under the Order. Any such opposition shall state with particularity the grounds for modifying the proposed Protective Order. The party seeking the modification shall have the burden of proving that such modifications are necessary. While the motion is pending, no disclosure of confidential information shall be made to the persons for whom disclosure is opposed, but the filing of the motion shall not preclude disclosure of the confidential information to persons for whom disclosure is not opposed and shall not toll the time for taking any action in the proceeding.

(h) *Other Proceedings.* Counsel for a party who receives confidential information in a proceeding will not be restricted by the Board from representing that party in any other proceeding or matter before the Office. Confidential information received in a proceeding, however, may not be used in any other Office proceeding in which the providing party is not also a party.

(i) *Disposal of Confidential Information.* Within one month after final termination of a proceeding, including any appeals, or within one month after the time for appeal has expired, each party shall assemble all copies of all confidential information it has received, including confidential information provided to its representatives and experts, and shall destroy the confidential information and provide a certification of destruction to the party who produced the confidential information.

DEFAULT PROTECTIVE ORDER

The following Standing Protective Order will be automatically entered into the proceeding upon the filing of a petition for review or institution of a derivation:

Standing Protective Order

This standing protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked "PROTECTIVE ORDER MATERIAL."

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) *Parties.* Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

(B) *Party Representatives.* Representatives of record for a party in the proceeding.

(C) *Experts.* Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for,

or employed by, such a competitor with respect to the subject matter of the proceeding.

(D) *In-house counsel.* In-house counsel of a party.

(E) *Other Employees of a Party.* Employees, consultants or other persons performing work for a party, other than in-house counsel and in-house counsel's support staff, who sign the Acknowledgement shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

(F) *The Office.* Employees and representatives of the Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

(G) *Support Personnel.* Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

3. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

4. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) *Documents and Information Filed With the Board.*

(i) A party may file documents or information with the Board under seal, together with a non-confidential description of the nature of the confidential information that is under seal and the reasons why the information is confidential and should not be made available to the public. The submission

shall be treated as confidential and remain under seal, unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that the documents or information do not to qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. The nonconfidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) *Documents and Information Exchanged Among the Parties.* Information designated as confidential that is disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as "PROTECTIVE ORDER MATERIAL" and shall be produced in a manner that maintains its confidentiality.

(j) *Standard Acknowledgement of Protective Order.* The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

[CAPTION]

Standard Acknowledgment for Access to Protective Order Material

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

[Signature]

APPENDIX C: Model Order Regarding E-Discovery in Trials Before the Patent Trial and Appeal Board

The Board pursuant to § 42.5 orders as follows:

1. This Order supplements all other discovery rules and orders. It streamlines Electronically Stored Information (ESI) production to promote "the just, speedy, and inexpensive resolution" of this proceeding in a manner consistent with § 42.1.

2. This Order may be modified for good cause. The parties shall jointly submit any

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **STIPULATED PROTECTIVE ORDER** is being served on January 18, 2019, via EMAIL pursuant to 37 C.F.R. § 42.6(e), to counsel for Petitioners as addressed below:

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