

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE LLC,  
Petitioner,

v.

PERSONALIZED MEDIA COMMUNICATIONS, LLC,  
Patent Owner.

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IPR2020-00719 (Patent 8,739,241 B1)  
IPR2020-00720 (Patent 8,601,528 B1)  
IPR2020-00722 (Patent 7,747,217 B1)  
IPR2020-00723 (Patent 7,747,217 B1)

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Before GEORGIANNA W. BRADEN, JON M. JURGOVAN, and  
JOHN F. HORVATH, *Administrative Patent Judges*.

JURGOVAN, *Administrative Patent Judge*.

ORDER

*Denying Patent Owner's Motion to Seal  
and Enter the Default Protective Order  
37 C.F.R. §§ 42.14, 42.54, and 42.71*

## I. INTRODUCTION

On March 21, 2020, Google, LLC (“Petitioner”) filed Petitions in IPR2020-00719, IPR2020-00720, IPR2020-00722 and IPR2020-00723 for *inter partes* reviews of U.S. Patent Nos. 8,739,241 B1, 8,601,528 B1, 7,747,217 B1, and 7,747,217 B1, respectively. Personalized Media Communications, LLC (“Patent Owner”) filed Preliminary Responses to the Petitions in each case. By email communication dated July 9, 2020, Patent Owner explained that it had filed Motions to Seal exhibits containing the tables of contents of Petitioner’s invalidity expert reports in district court litigation between the parties, together with its Preliminary Responses. *See* Ex. 3001. However, as Patent Owner further explained, a check-up later revealed that the Motions to Seal were not accessible on the PTAB portal, and the PTAB help desk advised Patent Owner to upload the Motions to Seal the exhibits again, which it did on July 8, 2020. IPR2020-00719, Paper 9, Ex. 2002; IPR2020-00720, Paper 9, Ex. 2002; IPR2020-00722, Paper 14, Ex. 2116; IPR2020-00723, Paper 14, Ex. 2016.

Patent Owner’s Motions to Seal indicate that the above-noted exhibits were marked “Highly Confidential – Attorney’s Eyes Only” by Petitioner’s counsel in the district court litigation because Patent Owner had claimed the expert reports contain Patent Owner’s confidential information. *Id.* However, Patent Owner claims the excerpted tables of contents of the expert reports contain no confidential information and do not need to be sealed. *Id.* Patent Owner further states that to the extent Petitioner believes there is good cause to seal the exhibits, Patent Owner does not oppose their sealing. *Id.*

## II. DISCUSSION

The record for an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be provisionally sealed until the motion to seal is decided.

37 C.F.R. § 42.14. Public policy strongly favors making all of the information filed in an *inter partes* review open to the public. *See Garmin Int'l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, Paper 34 at 1–2 (PTAB Mar. 14, 2013). The standard for granting a motion to seal is “good cause,” and the party moving to seal a document bears the burden of proving entitlement to the requested relief. 37 C.F.R. §§ 42.20(c), 42.54(a). “Good cause” can be established by showing sufficiently that (a) the information sought to be sealed is truly confidential, (b) a concrete harm would result to a party upon its public disclosure, and (c) the interest in maintaining the confidentiality of the information outweighs the strong public interest in maintaining an open and understandable record. *See Argentum Pharms. LLC v. Alcon Research Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

A motion to seal is used to prevent a party or person from disclosing confidential information. *Id.* “Confidential information” is “trade secret or other confidential research, development, or commercial information” consistent with Federal Rule of Civil Procedure 26(c)(1)(G). Consolidated Trial Practice Guide, November 2019, 19 E.2. Patent Owner’s Motions to Seal do not even allege, let alone demonstrate, that any information in the identified exhibits is confidential information under this definition. To the contrary, Patent Owner avers that the exhibits at issue contain *no* confidential information. IPR2020-00719, Paper 9, 1; IPR2020-00720,

IPR2020-00719, IPR2020-00720, IPR2020-00722, IPR2020-00723  
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Paper 9, 1; IPR2020-00722, Paper 14, 1; IPR2020-00723, Paper 14, 1.  
Patent Owner's Motions also fail to aver, let alone demonstrate, that a concrete harm would befall Patent Owner from disclosure of the tables of contents, or that Patent Owner's interest in maintaining the confidentiality of the tables of contents outweighs the strong public interest in maintaining open and understandable records. Accordingly, for all of these reasons, Patent Owner fails to establish that good cause exists to grant the Motions to Seal Exhibit 2002 in IPR2020-00719; Exhibit 2002 in IPR2020-00720; Exhibit 2116 in IPR2020-00722; and Exhibit 2016 in IPR2020-00723.

We note that these motions to seal are the second set of motions to seal filed in this family of proceedings (IPR2020-00719 to IPR2020-00725), and in each of the motions to seal filed to date one party has sought to seal a document containing information that the other party purports to be confidential, without any attempt to make the required showings for such a motion. *See* IPR2020-00722, Paper 13; IPR2020-00723, Paper 13; IPR2020-00725, Paper 8. Any further motions to seal from any party in this family of proceedings must at least attempt to show (i) the information sought to be protected is its own; (ii) the information is confidential because it contains that party's trade secret or other confidential research, development, or commercial information; and (iii) the interest in maintaining the confidentiality of the information sought to be protected outweighs the strong public interest in maintaining an open and understandable record.

In the unusual event that a party desires to file a motion to seal confidential information that is not its own, the parties shall first confer as required under 37 C.F.R. § 42.54(a) to determine how best to proceed, and

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no such motion shall be filed without prior Board authorization. Failure to comply with these instructions risks appropriate sanctions under 37 C.F.R. § 42.12.

#### ORDER

It is ORDERED that Patent Owner's Motions to Seal are *denied*;

FURTHER ORDERED that any further motions to seal from either party will comply with this Order.

IPR2020-00719, IPR2020-00720, IPR2020-00722, IPR2020-00723  
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