

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BLACKBERRY LIMITED,  
Petitioner

v.

MOBILE IRON, INC.,  
Patent Owner

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Case IPR2020-01604  
Patent 8,359,016

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**PETITIONER’S MOTION TO SEAL CONFIDENTIAL INFORMATION  
AND ENTER DEFAULT PROTECTIVE ORDER**

***Mail Stop “PATENT BOARD”***  
Patent Trial and Appeal Board  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

## **I. Requested Relief**

Pursuant to 37 C.F.R. §§ 42.14, 42.54, and 42.55, BlackBerry submits this Motion to Seal Confidential Information and Enter Default Protective Order. BlackBerry requests that the confidential version of the Petition and Exhibit EX1016 be treated as confidential information and kept under seal. Good cause exists to seal the confidential version of the Petition and Exhibit EX1016 because these documents contain sensitive settlement terms that a business would not make public and that the contracting parties have agreed to keep confidential per the terms of the agreement. The confidential information is also immaterial to the prior-art grounds in the Petition, and a public version of the Petition was filed with the confidential information redacted.

Accordingly, Petitioner submits this Motion to seal the confidential version of the Petition and Exhibit EX1016 and requests entry of the Default Protective Order.

## **II. Good Cause Exists for Sealing the Confidential Information**

Good cause exists for sealing the confidential version of the Petition and Exhibit EX1016. The Board may issue this order “for good cause.” 37 C.F.R. § 42.54. For good cause, the Board needs to know why information sought to be sealed constitutes confidential information. *Garmin Int’l, Inc. v.*

*Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 36, Decision on Revised

Mot. to Seal, p. 4 (P.T.A.B. Apr. 5, 2013). The Board then balances the needs in protecting the information against the public's interest in maintaining a complete and understandable file history. *Id.* at 8.

**A. The Petition and Exhibit EX1016 contain confidential business information.**

The PTAB Trial Practice Guide explains that “confidential information” includes “trade secret or other confidential research, development, or commercial information.” Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). The Board routinely seals confidential commercial information. *See, e.g., Prong, Inc. v. Yeoshua Sorias*, IPR2015-01317, Paper 32; *Cisco Systems, Inc. v. Crossroads Systems, Inc.*, IPR2014-01463, Paper 49.

Here, the information sought to be sealed is highly-confidential, competitively-sensitive settlement terms. Particularly, Exhibit EX1016 contains the specific settlement and license terms between Good Technology Corp. and Good Technology Software, Inc., and Patent Owner MobileIron, which are of the nature contemplated as protectable under Fed. R. Civ. P. 26(c)(1)(G). Public disclosure would cause significant competitive harm to BlackBerry, as well as to Patent Owner MobileIron, which was a party to the

settlement and license agreement of Exhibit EX1016. BlackBerry certifies that this information has not been published or otherwise made public.

Accordingly, the Board should seal and keep this information confidential.

**B. The public's interests are served.**

BlackBerry understands that the Board must 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. 48756, 48760 (Aug. 14, 2012).

Here, the public has little, if any, interest in accessing the settlement terms disclosed in Exhibit EX1016. The public has little need or right to know the precise details of Good Technology's and MobileIron's non-public settlement and license terms given in EX1016. Additionally, the specific settlement and license terms are related solely to whether BlackBerry, which subsequently acquired Good Technology, is barred from filing a petition under 35 U.S.C. § 315(b). This information is immaterial to BlackBerry's prior-art arguments—none of BlackBerry's prior art arguments cite to or rely upon any of the confidential information disclosed in EX1016 or that is redacted from that public version of the Petition. Finally, a redacted version

of the Petition is filed. The redactions in the public version of the Petition are minimal.

The public has a full record and understanding of the case from the public version of the Petition, which, when balanced against the highly-confidential, business-sensitive nature of the information sought to be sealed, weighs in favor of seal.

Accordingly, good cause exists to seal the confidential version of the Petition and Exhibit EX1016.

### **III. Proposed Protective Order**

BlackBerry requests entry of the Default Protective Order, which is attached to this motion as Appendix A.

### **IV. Conclusion**

For the foregoing reasons, BlackBerry respectfully requests that the Board (1) seal the Petition (Paper No. 2) and Exhibit EX1016 as confidential information and (2) enter the Default Protective Order (Appendix A).

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

/Kyle E. Conklin/

Kyle E. Conklin (Reg. No. 59,425)  
Attorney for Petitioner

Date: September 17, 2020

1100 New York Avenue, NW  
Washington, D.C. 20005  
(202) 371-2600

# **Appendix A**

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Patent 8,349,016

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**STANDING PROTECTIVE ORDER**

This 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) 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.
- (F) The Office. Employees and representatives of the United States Patent and Trademark 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.

3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in (d)(2)(A)–(E), 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 and after signing the Acknowledgment. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

4. 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.

5. 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 along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not 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. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential 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 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.

Documents (including deposition transcripts) and other information designated as confidential that are 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.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

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**STANDARD ACKNOWLEDGEMENT FOR ACCESS TO PROTECTIVE  
ORDER MATERIALS**

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.

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Signature

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Date