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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CRS ADVANCED TECHNOLOGIES, INC.,  
Petitioner,

v.

Patent of FRONTLINE TECHNOLOGIES, INC.,  
Patent Owner.

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Case CBM2012-00005  
Patent 6,675,151C1

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**PETITIONER CRS ADVANCED TECHNOLOGIES, INC.'S  
SUBSTITUTE MOTION TO FILE DOCUMENTS UNDER SEAL**

MAIL STOP PATENT BOARD  
Patent Trial and Appeal Board  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

## **I. Relief Requested**

In its Decision dated May 28, 2013, the Board denied CRS's Motion to Seal without prejudice, allowing CRS to file by June 5, 2013, a substitute motion to seal in compliance with its Decision. Responsive to the Decision and under 37 C.F.R. § 42.14, Petitioner CRS Advanced Technologies, Inc. ("CRS") hereby requests that the Board enter the Proposed Protective Order (CRS Ex. 1019) and grant this Substitute Motion to Seal, thereby maintaining the confidentiality of the non-publicly available Reply (Paper 40) and two non-publicly available exhibits (Exs. 1015 and 1016).

## **II. The Proposed Protective Order**

The parties have jointly agreed to the Proposed Protective Order (CRS Ex. 1019) and present it for the Board's consideration.

In its Decision, the Board requested that the parties identify the differences between the Proposed Protective Order and the Default Protective Order set forth in the Office Patent Trial Guide. Decision at 2. In response, Petitioner identifies the following differences:

- Include sections entitled Definition of PROTECTIVE ORDER MATERIAL, Prosecution Bar, and Miscellaneous Provisions; and
- Update the individuals who have access to PROTECTIVE ORDER MATERIAL by further clarifying the definition of parties, party representatives, and experts.

The parties have included these amendments to the Proposed Protective Order to ensure that confidential information is not disclosed to others outside of this proceeding in violation of a court-ordered protective order (CRS Ex. 1018). Employees of the Patent and Trademark Office who work with members of the Board are and were not intended by the parties to be excluded access from such information.

Accordingly, the parties respectfully request that the Board enter the Proposed Protective Order.

### **III. Statement of Facts Showing There is Good Cause for the Board to Allow the Filing Under Seal**

In accordance with Paragraph 5(a)(i) of the Protective Order (CRS Ex. 1019), “[a] party may file documents or information with the Board under seal, together with a nonconfidential description of the nature of PROTECTIVE ORDER MATERIAL that is under seal and the reasons why the information is confidential and should not be made available to the public.”

CRS's Reply includes a reference to documents and information indicated by Patent Owner as being PROTECTIVE ORDER MATERIAL under the terms of the Proposed Protective Order. More specifically, CRS's Reply and selected exhibits that were filed concurrently with the Reply involve a Frontline license agreement with a third party involving the patent at issue in this proceeding (CRS Ex. 1016) and excerpts of a confidential deposition transcript (CRS Ex. 1015) that addresses certain business-sensitive terms of the license agreement, both of which have been indicated by Patent Owner as being PROTECTIVE ORDER MATERIAL under the proposed Protective Order.

The Patent Owner maintains that the terms of the license agreement between it and the third party constitute confidential commercial business information pertinent to its company. The Patent Owner does not share its license agreements and the terms of those agreements with its competitors, including Petitioner CRS, let alone with the public at large. The license agreement was produced by Frontline to CRS's counsel during the course of discovery in the pending district court action under the terms of the court-ordered protective order (CRS Ex. 1018). CRS's counsel is thereby bound to take steps to maintain the confidentiality of the terms of that license agreement, although the parties have agreed that discovery obtained in the district court proceeding may be freely used in this proceeding provided that the confidentiality of such materials is maintained.

Based on the reasoning above, Petitioner CRS submits that the indication by Patent Owner that these materials are PROTECTIVE ORDER MATERIAL under the Proposed Protective Order constitutes good cause for the Board to allow the filing under seal pursuant to 37 C.F.R. § 42.14.

#### **IV. Conclusion**

For the foregoing reasons, Petitioner CRS respectfully requests that the Board enter the Proposed Protective Order (CRS Ex. 1019) and grant this motion, thereby maintaining the confidentiality of the non-publicly available Reply (Paper 40) and two non-publicly available exhibits (Exs. 1015 and 1016) that were filed on May 20, 2013.

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