

Filed on behalf of Clearlamp, LLC

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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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LKQ CORPORATION  
Petitioner

v.

CLEARLAMP, LLC  
Patent Owner

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Case IPR2013-00020  
Patent 7,297,364

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**JOINT MOTION FOR PRESERVATION OF THE RECORD PENDING  
APPEAL OR, ALTERNATIVELY,  
MOTION TO EXPUNGE UNDER RULE 42.56**

**I. Background and Overview of Relief Requested**

Petitioner LKQ Corporation (“LKQ”) and Patent Owner Clearlamp, LLC (“Clearlamp”) (collectively “the Parties”) jointly request that the Board maintain the record of this case (*i.e.*, not allow the sealed documents in this proceeding to become public) until after the appeal process for this proceeding concludes.

Trial in this case was instituted on March 29, 2013. The Board entered its Final Written Decision on March 27, 2014 (Paper 73). In its Final Written Decision, the Board granted Clearlamp’s two motions to seal (Papers 34 and 41). Paper 73, at p. 41. In addition the Board directed Clearlamp to file, within 45 days from the entry of the Final Written Decision, a motion to expunge the Sealed Documents (*i.e.*, Paper 35 and Exhibits 2006, 2009, 2011, 2012, 2016, 2018, 2021, 2024, and 2025, collectively referred to herein as the “Sealed Documents”), else those documents would become public.

Pursuant to 37 C.F.R. § 90.3(a), the deadline for the Parties to file a notice of appeal is May 29, 2014. Because the Parties are each contemplating appeal, and because the sealed exhibits should remain sealed yet should also be a part of the record on appeal, the parties respectfully request relief from the Board’s directive contained on page 41 of the Final Written Decision. Instead of the documents being expunged or made public, the Parties ask that the record be preserved as it is (*i.e.*, that the Sealed Documents remain sealed) until the appeal process concludes.

If the Board denies the Parties' request to maintain the record pending appeal, then Clearlamp requests, in the alternative, that the Sealed Documents be expunged from the record pursuant to 37 C.F.R. § 42.56 and not made public. If the Board determines that information contained in any documents previously filed under seal will be made public, the Parties respectfully request permission to file alternate redacted versions of those documents.

## **II. The Record Should Be Preserved Pending Appeal**

Sealed confidential information subject to a protective order will ordinarily become public 45 days after final judgment in a trial unless a motion to expunge is filed. (Rule 42.56; *see also* Comment 172, 77 FED. REG. 48612, 48644). Here, the date 45 days after final judgment was entered is May 12, 2014. However, the Parties have until 63 days from entry of judgment (*i.e.*, until May 29, 2014) to file a notice of appeal.

The Federal Rules of Appellate Procedure and the Federal Circuit Rules require that the record be retained by the Board pending appeal. Specifically, Federal Circuit Rule 17(a) states that “the agency *must retain the record.*” (emphasis added.) Federal Circuit Rule 17(d), titled “Access of Parties and Counsel to Original Record” also requires that the parties and their counsel have access to both the sealed and unsealed portions of the record “*when a petition for review or notice of appeal is filed.*” (emphasis added.) No notice of appeal has

yet been filed for this case, and the deadline for filing a notice of appeal, as noted above, is May 29, 2014.

Moreover, information that was filed under seal in this IPR was discussed by the parties in their submissions and/or was cited to by the Board in its Final Written Decision. For example, Sealed Documents were cited at:

- Paper 35 (Patent Owner's Sealed Response) at pp. 30, 46–48 (Exhibit 2009); pp. 38-47 (Exhibit 2016)<sup>1</sup>);
- Exhibit 2004 (Bell Declaration) at p. 32 (Exhibit 2006); p. 33 (referencing claim chart submitted as Exhibit 2018);
- Exhibit 2009 (Rappaport Declaration) at pp. 16–21 (Sandau testimony in Exhibits 2016 and 2021); pp. 21–22 (describing data contained in Exhibit 2011); p. 21 (referencing Devlin deposition transcript (Exhibit 2024);
- Exhibit 2022 (Asselta Declaration) at p. 2 (Exhibit 2012);
- Exhibit 2025 (Supplemental Bell Declaration) at p. 2 (Exhibits 2012 and 2018); and
- Paper 73 (Final Written Decision) at 27 (Exhibit 2016).

If the record is not preserved in its entirety—including any sealed portions—and an appeal is taken, the Federal Circuit will not be able to fully consider the issues

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<sup>1</sup> Exhibit 2016 is excerpts from the deposition of Robert Sandau; Exhibit 2021 is the full transcript of that deposition.

discussed in the Final Written Decision, which would cause prejudice to the Parties.

**III. If the Board Denies the Parties' Motion to Preserve, Confidential Information Should be Expunged in Favor of Redacted Exhibits**

If the Parties' Motion for Preservation of the Record is denied, the Parties respectfully request that all sealed confidential information filed on the IPR docket be expunged for the reasons set forth below.

**A. The Board's Final Written Decision Authorized Filing of a Motion to Expunge**

On page 41 of its Final Written Decision (Paper 73), the Board granted Clearlamp's motions to seal the Sealed Documents, and further directed that "[S]hould Clearlamp seek to maintain the confidentiality of the material that is the subject of its Motion to Seal, Clearlamp should file a motion to expunge the information from the record before 45 days from the entry of judgment." The parties understand this statement to authorize the filing of a motion to expunge. Further, the motion is timely because 45 days from the Board's Final Written Decision is May 11, 2104.

**B. Making the Sealed Documents Public Would Cause Prejudice to the Parties**

For the same reasons set forth in the Clearlamp's motions to seal, namely that the sealed information contains sensitive and confidential business information of the Patent Owner and the Petitioner, the Parties now respectfully

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