

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ABB INC.
Petitioner,

v.

ROY-G-BIV CORPORATION
Patent Owner

Case IPR2013-00062
Case IPR2013-00282
Patent 6,516,236 B1

Before, THOMAS L. GIANNETTI, BRYAN F. MOORE, and
JENNIFER S. BISK, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

DECISION
Motion to Seal
37 C.F.R. §§ 42.1 and 42.54

Petitioner, ABB Inc., has filed a motion to seal certain documents produced by Patent Owner, Roy-G-Biv Corporation. Paper 43 (“Motion”). The documents consist of a deposition transcript (Ex. 1129) of Patent Owner’s founder and chairman, David W. Brown, Mr. Brown’s weekly status reports from 1994 and 1995 (Exs. 1110-16, 1122-26), an additional set of time records for EMC Project containing time entries (Ex. 1128), and agenda materials from a June 1995 officer meeting attended by Mr. Brown (Ex. 1120). For the reasons that follow, we deny Petitioner’s motion.

DISCUSSION

The Board’s standards for granting motions to seal are discussed in *Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001 (Paper 34, March 14, 2013). In summary, there is a strong public policy for making all information filed in *inter partes* review proceedings open to the public. *Id.* The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54. The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). This includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. In addition, a motion to seal is required to include a certification that the moving party has in good faith conferred, or attempted to confer, with the opposing party in an effort to come to an agreement on the scope of the protection sought. *Garmin, supra* at 3.

Petitioner, as the moving party, has failed to carry this burden. The issue of Mr. Brown’s diligence in 1994-95 was injected into this proceeding by Patent Owner, to overcome certain references relied on by Petitioner. In support, Petitioner submitted Mr. Brown’s declaration (Ex. 2010) and, as corroboration, his

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1994-95 time records (Exs. 2010-3 – 2010-6). Neither Mr. Brown's declaration nor the related documents were sealed. The documents that are the subject of this motion relate to the activities of Mr. Brown in that same period. Motion 2. Petitioner relies on them to rebut Patent Owner's allegation of diligence. Neither Petitioner, nor Patent Owner, explain why some documents concerning Mr. Brown's activities from that period should be sealed, when others are not.

Upon reviewing the documents, it is difficult to see how summary descriptions of Mr. Brown's activities from seventeen years ago are confidential today. There is no proof in the record that the information contained in the documents is confidential, only the fact that they were designated confidential in the district court proceeding. That is not sufficient, especially when weighed against the public's access rights to the evidence relied on by the parties.

Finally, there is no indication that the parties have conferred to reach agreement on the scope of the protection, if any, that is necessary to protect any confidential information. *See* 37 C.F.R. § 42.54. The certification provided by Petitioner indicates only that Patent Owner does not oppose the motion.

The parties are, therefore, directed to meet and confer on the issues raised by this decision, particularly, whether there is a need to seal the documents relied on by Petitioner when other, similar documents relied on by Patent Owner are not sealed.

In view of the foregoing, it is therefore

ORDERED that Petitioner's Motion to Seal is denied;

FURTHER ORDERED that Exhibits 1110-16, 1120, and 1122-26, and 1128 submitted under seal, shall be made public in ten business days from the date of this order;

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FURTHER ORDERED that within five business days from the date of this order the parties shall meet and confer (in person or by telephone) to discuss in good faith the maintenance by Patent Owner of its confidentiality claim for the documents identified above. The results of this conference shall be reported to Board, promptly, by email.

PETITIONER:

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