

Filed on behalf of: Software Rights Archive, LLC

Paper _____

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC., LINKEDIN CORP., and TWITTER, INC.
Petitioners

v.

SOFTWARE RIGHTS ARCHIVE, LLC
Patent Owner

Case IPR2013-00479
Patent 5,832,494

PATENT OWNER'S MOTION TO SEAL

I. Introduction

Pursuant to 37 CFR § 42.54, Patent Owner Software Rights Archive, LLC, (“SRA”) respectfully submits this Motion to Seal Exhibit 2114, Declaration of Amy Langville (“Langville Declaration”). The Langville Declaration (Exhibit 2114), which includes reference to confidential sensitive business information of third parties that SRA is under a contractual obligation to maintain in confidence, is being filed concurrently with this Motion in support of the Patent Owner Response. Below, Patent Owner explains that good cause exists for placing the Langville Declaration under seal.

II. Applicable Legal Principles for Sealing Confidential Information

There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in a patent and therefore affects the rights of the public. *St. Jude Medical, Cardiology Division, Inc. v. Volcano Corp.*, IPR2013-00258, Decision to Revised Motion to Seal 37 C.F.R. §§ 42.14 and 42.54, Paper 28 at 2. Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; and a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. *Id.*

It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7) (“The Director shall prescribe regulations -- ... providing for protective orders governing the exchange and submission of confidential information”). *Id.* In that regard, the *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012), provides:

The rules aim to 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.

* * *

Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. § 42.54.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. Patent Owner, as the moving party, has the burden of proof in showing entitlement to the requested relief. *Id.*

III. Good Cause Exists for Sealing Exhibit 2114, Declaration of Amy Langville

With Patent Owner's Response, Patent Owner is submitting the Langville Declaration to support arguments for patentability of claims challenged in this proceeding. In paragraphs 25, 112, and 113 of her declaration, Dr. Langville makes reference to certain facts about confidential licenses to the patents under review. Because the Langville Declaration includes reference to this confidential business information of third parties, Patent Owner submits that sealing Exhibit 2114 is appropriate.¹

SRA is under a contractual obligation to maintain certain information regarding the licensing of the patents in confidence. The confidential information included in the Langville Declaration has not been made, and will not be made, available to the public. Public disclosure of the terms of the license could hurt the third party signatories by disclosing confidential financial information and business practices.

SRA is cognizant of the general public policy for providing full public access to *inter partes* review papers. In seeking this motion to seal, SRA is merely attempting to comply with its contractual obligations, and thus SRA has

¹ Patent Owner will submit a non-confidential version of the Langville Declaration with the confidential information from paragraphs 25, 112, and 113 redacted.

narrowly tailored its request. In addition, the public's interest in these proceedings is addressed by Patent Owner's submission of the remaining portions of the Langville Declaration. The thrust of Patent Owner's argument, and how the confidential information relates thereto, is discernible from the remaining portions of Dr. Langville's declaration.

Accordingly, Patent Owner submits that good cause exists for maintaining the confidential information set forth in Exhibit 2114, Declaration of Amy Langville under seal and urges the Board to grant the present Motion to Seal.

IV. Certification of Non-Publication

On behalf of Patent Owner, undersigned counsel certifies the information sought to be sealed has not been published or otherwise made public. Further, the confidentiality of this information has been consistently maintained by the Patent Owner during this proceeding, and any related proceedings.

V. Certification of Conference with Opposing Parties Pursuant to 37 C.F.R. §42.54

Patent Owner has attempted to confer in good faith with Petitioners. Patent Owner has proposed use of the default protective order set forth in the Office Patent Trial Practice Guide to govern the handling of confidential information in this proceeding. No agreement has been reached at this time.

VI. Proposed Protective Order

The Protective Order attached hereto as Appendix A corresponds to the

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