

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WINTEK CORPORATION
Petitioner,

v.

TPK TOUCH SOLUTIONS INC.
Patent Owner

Case IPR2013-00568
U.S. Patent No. 8,217,902

PATENT OWNER'S MOTION TO SEAL UNDER 37 C.F.R. § 42.54

I. Introduction

Patent Owner TPK Touch Solutions Inc. (“TPK”) hereby submits this Motion to Seal Exhibit 2019, which is being filed in connection with its Patent Owner Response. Both the Patent Owner Response and Exhibit 2019 (along with various other evidentiary exhibits) are being filed concurrently with this Motion. As explained in more detail below, the document being submitted as Exhibit 2019 includes sensitive business confidential information pertaining to TPK’s proprietary touch-screen technology and, therefore, good cause exists for placing this document under seal.

Patent Owner has conferred with Petitioner Wintek Corporation (“Wintek”) regarding the scope of the proposed protective order in this proceeding. As explained below, while Petitioner has agreed to the default protective order set forth in the *Office Patent Trial Practice Guide* (77 Fed. Reg. 48771 (Aug. 14, 2012)), Patent Owner also proposed a few changes to one provision in the default order and has not yet received Petitioner’s response concerning these requested modifications.

II. Good Cause Exists for Sealing Certain Confidential Information

In determining whether to grant a Motion to Seal, 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.” *Id.* at

48760. “A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed.” 37 C.F.R. § 42.14. “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.” 37 C.F.R. § 42.54. “The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information.” *Id.*

Exhibit 2019 is an evidentiary exhibit being filed concurrently with this motion, and includes information that Patent Owner maintains is sensitive and confidential business technical, research, product development, and/or strategy information related to Patent Owner’s products and technology. In particular, this one-page document consists of screenshots from software programs used internally by Patent Owner, which show certain confidential designs and implementations for the circuitry and components in Patent Owner’s proprietary touch-screens. As such, this document contains non-public, highly-sensitive, confidential detailed descriptions of Patent Owner’s products and technology. Moreover, this type of information was also covered by the definitions for “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” and/or “HIGHLY CONFIDENTIAL – SOURCE CODE” under the Protective Order in the underlying district court litigation in the U.S. District Court for the Northern District of California, San Francisco Division

(Civil Case No. 3:13-cv-02218-JST). Thus, Patent Owner respectfully submits that good cause exists for filing this exhibit under seal in this proceeding.

III. Certification of Non-Publication

On behalf of Patent Owner, undersigned counsel certifies the information sought to be sealed by this Motion to Seal has not, to their knowledge, been published or otherwise made public. Efforts to maintain the confidentiality of this type of information have been undertaken by Patent Owner and Petitioner in the related district court proceeding between the parties.

IV. Certification of Conference with Opposing Party Pursuant to 37 C.F.R. § 42.54

Patent Owner has in good faith conferred with Petitioner as to the scope of the proposed Protective Order. Petitioner has stated to Patent Owner that it agrees to the provisions in the Board's Default Protective Order set forth in the *Office Patent Trial Practice Guide* (77 Fed. Reg. 48771 (Aug. 14, 2012)). As described in detail below, Patent Owner has also requested a few changes with respect to the provision in the Default Protective Order setting forth the list of persons who may receive access to confidential materials in order to harmonize this provision with the corresponding provisions in the Protective Order entered in the related district court litigation. As of filing of this Motion, however, Patent Owner has not yet

received a response from Petitioner concerning these proposed changes to the protective order.

V. Proposed Protective Order

Patent Owner respectfully requests that its proposed protective order be entered in place of the Default Protective Order in this proceeding. A clean copy of Patent Owner's proposed protective order is submitted herewith as Exhibit 2024. Additionally, submitted as Exhibit 2025 is a redlined version of the proposed order, which illustrates the changes from the Default Protective Order.

As shown in the redlined version, Patent Owner's proposed Protective Order is substantially similar to the Default Protective Order. Each of the changes to the default order relate to modifying the list of persons who may receive access to the materials designated as confidential information in this proceeding to maintain consistency with the related district court proceeding. Specifically, only three substantive changes have been made to the default order:

First: Paragraph 2 is amended such that the entry "Parties. Persons who are owners of a patent involved in the proceeding and other persons of are named parties to the proceeding" is deleted from the listing of who may receive confidential information under the protective order. The effect of this deletion is that employees and principals of TPK and Wintek may not receive access to the confidential information. This harmonizes this proceeding's protective order with

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