

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARRIS GROUP, INC.  
Petitioner

v.

C-CATION TECHNOLOGIES, LLC  
Patent Owner

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Case : IPR2014-00746  
U.S. Patent 5,563,883

Before the Honorable KRISTEN L. DROESCH, KALYAN K. DESHPANDE, and  
MIRIAM L. QUINN *Administrative Patent Judges.*

**PETITIONER'S MOTION TO EXPUNGE**

## **I. STATEMENT OF PRECISE RELIEF REQUESTED**

Pursuant to 37 C.F.R. § 42.56, and the authorization provided in the February 18, 2015 Judgment, *see* Paper No. 28, Petitioner ARRIS Group, Inc. hereby requests that the confidential information in the record be expunged. Specifically, Petitioner requests that the unredacted copy of Patent Owner C-Cation Technologies' Patent Owner Preliminary Response, *see* Paper No. 19, and Exhibits 2012, 2014, 2015, and 2016, be expunged from the record of this proceeding.<sup>1</sup>

## **II. STATEMENT OF REASONS FOR RELIEF REQUESTED**

### **A. Procedural Background**

Petitioner filed the petition in this proceeding on May 13, 2014. *See* Paper No. 1. During the preliminary proceedings, Patent Owner filed an opposed motion for additional discovery, *see* Paper Nos. 10, 11, and 14, and Patent Owner's motion

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<sup>1</sup> Petitioner asked Patent Owner whether it opposes this motion. Patent Owner indicated it would not oppose if ARRIS would allow Patent Owner to use Petitioner's confidential materials in another IPR proceeding. Since such use is inconsistent with the undertaking executed by Patent Owner's counsel (as embodied in the default protective order as entered by the Board), among other reasons, Petitioner has declined Patent Owner's request. Patent Owner has not indicated whether it opposes this motion without its suggested conditions.

was granted, *see* Paper No. 15. Petitioner was ordered to produce “Agreements between [ARRIS] and Comcast under which Comcast requested indemnification for the claims brought against Comcast in the Texas Litigation that reference (or are contingent on) [ARRIS’s] ability to control the litigation.” Paper No. 15. ARRIS produced the requested documents and moved for entry of the default protective order. *See* Paper No. 16. The Board granted ARRIS’s motion. *See* Paper No. 18. Patent Owner relied on confidential materials produced by ARRIS in its Patent Owner Preliminary Response to argue that ARRIS was in privity with Comcast in connection with an earlier-filed litigation in the Eastern District of Texas. *See* Paper No. 19. Patent Owner also placed a number of confidential agreements between Comcast and ARRIS into the record. *See* Exs. 2012, 2014, 2015, and 2016. Concurrently with the filing of its Patent Owner Preliminary Response, Patent Owner filed a motion to seal its Preliminary Response. *See* Paper No. 20. Although it does not appear that Patent Owner sought to file Exhibits 2012, 2014, 2015, and 2016 under seal, those exhibits were properly filed as “Parties and Board Only.”

On November 24, 2014, the Board instituted trial as to one of the four challenged claims. *See* Paper No. 22. The Board also rejected Patent Owner’s challenge to the petition under 35 U.S.C. § 315(b) based on the record. On February 9, 2015, Patent Owner filed a statutory disclaimer cancelling the only

claim involved in the trial. *See* Paper No. 27. The Board entered a final judgment in this proceeding on February 18, 2015. *See* Paper No. 28.

### **B. Applicable Legal Standards**

The default rule in trial proceedings before the Board is that confidential information will become public ordinarily 45 days after a final judgment in a trial. *See* 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012). “A party seeking to maintain the confidentiality of the information, however, may file a motion to expunge the information from the record prior to the information becoming public.” Under 37 C.F.R. § 42.56, “[a]fter denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information in the record.”

### **C. The Confidential Version of the Patent Owner Preliminary Response and Exhibits 2012, 2014, 2015, and 2016 Should Be Expunged From the Record**

ARRIS’s agreements with its customers, including Comcast, “include provisions that are negotiated between the parties and are not publicly available.” *See* Ex. 1027 (Van Aacken Decl.), ¶ 3. “ARRIS treats its agreements with its customers as sensitive and confidential business information,” and ARRIS’s customers “expect these agreements to be confidential.” *Id.* at ¶ 4. As such, ARRIS “restricts access to the agreements and does not make them available to the public,” or ARRIS’s competitors. *Id.* Were the terms of the agreements to be

made publicly available, “both ARRIS[‘s] and Comcast’s competitive positions would be compromised.” *Id.* at ¶ 5.

Exhibits 2012, 2014, 2015, and 2016 are confidential agreements as discussed in Mr. Van Aacken’s declaration, Exhibit 1027. The redacted portions of Patent Owner’s Preliminary Response discusses certain confidential provisions of those agreements as negotiated between ARRIS and Comcast. *See Ex. 1027, ¶ 3.* The Board’s decision to institute trial, Paper No. 22, does not explicitly discuss any of the terms of these agreements. Therefore, Petitioner submits that there is good cause to expunge the un-redacted version of Patent Owner’s Preliminary Response and Exhibits 2012, 2014, 2015, and 2016 from the record in these proceedings.

This motion is timely because a final judgment was entered on February 18, 2015, and the 45-day window has not lapsed. *See 37 C.F.R. § 42.56.*

### **III. CONCLUSION**

Petitioner respectfully requests that the Board expunge Exhibits 2012, 2014, 2015, and 2016 and the un-redacted version of Patent Owner’s Preliminary Response pursuant to 37 C.F.R. § 42.56.

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