

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WAVEMARKET, INC. D/B/A LOCATION LABS
Petitioner

v.

CALLWAVE COMMUNICATIONS, LLC
Patent Owner

Case IPR2014-00920
Patent 6,771,970

**PETITIONER'S MOTION TO SEAL AND FOR ENTRY OF
PROTECTIVE ORDER PURSUANT TO 37 C.F.R. §§ 42.14 AND 42.54**

I. INTRODUCTION

The Patent Owner's Response to the Petition Filed June 9, 2014 is due Tuesday, March 3, 2015. It is Petitioner's understanding that the Patent Owner intends to rely upon the cross examination testimony of Petitioner's expert witness, Dr. Scott Hotes, in its response. Because Petitioner believes that the above-mentioned transcript contains confidential information, and Petitioner's attempts to resolve the matter through consultation with Patent Owner's counsel proved unsuccessful, Petitioner contacted the Board by e-mail correspondence dated February 24, 2015. On February 25, 2015 the parties received an e-mail communication from the Board authorizing Petitioner to file the present Motion to Seal, along with a publicly-available redacted version as well as an unredacted version of the transcript to be available to the Board and Parties only. Thus, Petitioner files the present Motion along with the above-mentioned redacted and unredacted versions of the deposition transcript of Dr. Scott Hotes as Exhibit 1119. In addition, Petitioner also moves for entry of the default protective order (Exhibit 1120) in this matter.

II. GOOD CAUSE FOR REDACTIONS/SEALING

Public policy favors making information filed in and *inter partes* review opened to the public. The same policy considerations apply to district court litigation. However, it is universally recognized that in order to comply with

discovery requirements, the disclosure of sensitive commercial information is oftentimes necessary. The uncontrolled disclosure of sensitive or confidential commercial information can be prejudicial to the disclosing party. Therefore, the rules of practice recognize the necessity of protecting confidential information from broad uncontrolled disclosure to the public. As set forth in the Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760:

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. . .

2. 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." The moving party bears the burden of proving it is entitled to the relief requested. Petitioner submits that granting its Motion to Seal will serve to protect sensitive commercial information, yet not significantly impact the ability to maintain a complete and understandable record of this proceeding. The proposed reductions are limited in number and content.

The proposed reductions contain what can be generally categorized as confidential customer names and confidential commercial information. The

sensitive nature of this information warrants protection. More specifically, the only proposed redactions from the 249 page transcript are identified and summarized in the table appearing below.

Transcript Exhibit 1119 Page:line(s)	General Description of the Confidential Information
36:2-3	Confidential customer names
42:24 - 43:10	Statements directed to Petitioner's business strategies and objectives
49:2-4; 49:7-12; 49:16-25 51:22; 52:11-12 and 16-18 53:2-5 and 13-15 54:2-3, 9-10 and 17-19 55:2-4, 10-12, and 18-20	Petitioner's contractual dealings with, and obligations to, its customers

On information and belief, the material sought to be redacted has not been published. Thus, Petitioner respectfully requests that this Motion to seal the unredacted version of the deposition transcript (Exhibit 1119) be granted.

III. PROTECTIVE ORDER

Filed herewith is Exhibit 1120, the default Protective Order set forth at the Trial Practice Guide, 77 Fed. Reg.48,756, 48,771.

Petitioner certifies that it has conferred, or attempted to confer with counsel for Patent Owner in an effort to resolve this matter, however these efforts have been unsuccessful. Petitioner requests that the Protective Order of Exhibit 1120 be entered by Order of the Board in this proceeding, pursuant to 37 C.F.R. § 42.54, in order to protect the confidential information contained in Exhibit 1119 for at least the reasons explained above, and that the deposition transcript (Exhibit 1119) be designed as "Confidential" thereunder.

Dated: March 2, 2015

Attorneys for Petitioner

Mark L. Hogge, Reg. No. 31, 662
Email: mark.hogge@dentons.com

Respectfully submitted,
Dentons US LLP

By: /Scott W. Cummings /
Scott W. Cummings, Reg. No. 41,567
Email: scott.cummings@dentons.com

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