

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE CORPORATION,
NETAPP INC. and
HUAWEI TECHNOLOGIES CO., LTD
Petitioners

v.

CROSSROADS SYSTEMS, INC.
Patent Owner

Case IPR2014-01209
Patent 7,051,147

**PATENT OWNER'S MOTION TO SEAL
EXHIBITS 2044, 2045, 2050, 2052**

Patent Owner Crossroads Systems, Inc. requests that its confidential commercial information be sealed pursuant to 37 C.F.R. §§ 42.14 and 42.54(A). Patent Owner requests the Board enter the default protective order set forth in Appendix B of the Office Trial Practice Guide, which is filed concurrently with this motion. Patent Owner has conferred in good faith with Petitioners, and Petitioners do not oppose entry of the default protective order.¹ The proposed protective order is attached as Exhibit A hereto. Pursuant to Appendix B of the Trial Practice Guide, the terms of the order take effect upon the filing of this motion. 77 Fed. Reg. 48756, 48770 (August 14, 2012).

Confidential information is protected from disclosure. 35 U.S.C. § 316(a)(7)

The Trial Practice Guide 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. . . . 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

¹ Petitioners do not oppose entry of the default protective order or Patent Owner's Motion to Seal, but reserve the right to file an opposition after reviewing the evidence in question.

trade secret or other confidential research, development, or commercial information.

77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). The standard for granting a motion to seal is good cause. 37 C.F.R. §42.54(a).

I. Information Relating to License Agreements Containing Confidentiality Provisions.

The first category of information Patent Owner requests to be sealed consists of (1) license agreements whose terms contain confidential commercial information and contain express confidentiality provisions (Ex. 2052); and (2) a table (Ex. 2050) containing the identity of Crossroads' licensees and the overall licensing revenue earned from the licenses. (Ex. 2052). Exhibits 2050 and 2052 contain confidential terms relating to agreements to license the patent at issue in this proceeding (and/or patents from the same family), including confidential licensee identification information, royalty rates, and payment terms. This information constitutes confidential information that should be protected from disclosure. In addition, although the terms of the licenses vary, generally they provide by their own terms that the terms of the licenses are confidential, and are only to be disclosed pursuant to a protective order and only as required by law. That such information is confidential and an appropriate subject of a motion to seal is generally non-controversial. *See, e.g.,* Ex. 2052 at CRDS204600-601. *HBPSI – Hong Kong, Ltd. v. SRAM, LLC*, IPR2013-00174, Paper 19 at 1 (PTAB June 11, 2013) (granting leave

to file confidential “Settlement and License Agreement” under seal). Patent Owner’s commercial information, including its license agreements and information contained therein, is properly considered confidential and Patent Owner has exhibited good cause for filing Exhibits 2050 and 2052 under seal.

Moreover, confidential customer names are considered confidential. *See, e.g., Schott Gemtron Corp. v. SSW Holding Co., Inc.*, IPR2013-00358, Paper 76 at 4 (PTAB May 16, 2014). The identity of a licensee contained in a confidential license agreement is tantamount to the identity of a confidential customer and should similarly be treated as confidential.

Restricting access to the very specific information in Exhibits 2050 and 2052 will cause little to no harm to the public. Patent Owner’s publically available response contains sufficient detailed information to allow the public to access “a complete and understandable file history of this *inter partes* review.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, Paper 37 at 4 (PTAB Apr. 5, 2013). For example, in Patent Owner’s Response it states “a large number of licensees have taken licenses directed specifically to Crossroads’ ’972 patent family. Ex. 2050. The total license payments through FY2014 are over \$60 million.” Response at 50. The public has, therefore, been apprised of the overall amount of license payments and specific information regarding the precise license payments from each licensee is unnecessary to provide an understanding of the Patent Owner’s argument. Patent

Owner further explains in its public filing that it has licensed to certain interested parties without the need for a lawsuit. *Id.* This detailed, but non-precise, information appropriately balances the rights of the public with the Patent Owner's right to keep its sensitive commercial information confidential.

2. Confidential Sales Information

Patent Owner also requests that certain sales information listing the quantity shipped and revenue received for certain products sold over a multi-year period (Exs. 2044, 2045) be sealed. This information is commercially sensitive and could be used by Patent Owner's competitors to Patent Owner's detriment. Patent Owner's confidential business information, including sales information, is properly considered confidential. *See, e.g., Smith & Nephew, Inc. v. Convatec Technologies, Inc.*, IPR2013-00097, Paper 89 at 2-3 (PTAB May 19, 2014). Crossroads' sales figures could also be used by competitors to unfairly compete against Crossroads for potential customers by undercutting Crossroads' pricing, or by contrasting Crossroads' sales figures with their own in an attempt to persuade customers to buy their products instead of Crossroads.

Again, Patent Owner's Response provides sufficient general information about this highly sensitive business information such that lacking knowledge of the precise information contained in Exhibits 2044 and 2045 would not inhibit the public's understanding of the Patent Owner's arguments and positions. *Gnosis*

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