

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC,
Petitioner

v.

DRAGON INTELLECTUAL PROPERTY, LLC,
Patent Owner.

Case IPR2014-01252
Patent 5,930,444

Before NEIL T. POWELL, GREGG I. ANDERSON, and
J. JOHN LEE, *Administrative Patent Judges*.

POWELL, *Administrative Patent Judge*.

DECISION
Petitioner's Motions to Seal
37 C.F.R. §§ 42.14 and 42.54

I. Introduction

Petitioner has filed a number of motions to seal various exhibits and pleadings, either in whole or in part. Patent Owner has filed oppositions to all of Petitioner's motions to seal. On November 15, 2014, Petitioner filed a Motion to Seal Exhibits 2001, 2003–2005, 2007–2009, 2011–2013, and 2015–2016. Paper 12 (“First Motion to Seal”). Patent Owner filed an Opposition to the First Motion to Seal. Papers 21, 22 (“First Opposition”).¹ On December 5, 2014, Petitioner filed a Motion to Seal Petitioner's Reply Brief on Real Party in Interest and Exhibit 1015 filed therewith. Paper 17 (“Second Motion to Seal”). Patent Owner filed an Opposition to the Second Motion to Seal. Paper 32 (“Second Opposition”). On December 24, 2014, Petitioner filed a Motion to Seal, in which Petitioner requested that we seal Patent Owner's First Opposition, Patent Owner's Motion for Additional Discovery (Paper 24), Exhibit 1017, “as well as portions of this Motion.” Papers 27, 28 (“Third Motion to Seal”).² On January 5, 2015, Petitioner filed a Motion to Seal Petitioner's Opposition to Patent Owner's Motion for Additional Discovery (Paper 31). Paper 30 (“Fourth Motion to Seal”). Patent Owner filed an Opposition that opposes both the Third Motion to Seal and the Fourth Motion to Seal. Paper 35 (“Third Opposition”). Patent Owner also filed another Opposition that opposes the Fourth Motion to Seal. Paper 36 (Fourth Opposition). For each of the exhibits and pleadings that Petitioner moves to seal, two versions have been filed: an unredacted, confidential version, and a redacted, public version.

¹ Paper 21 is an unredacted, confidential version of the first Opposition. Paper 22 is a redacted, public version of the first Opposition.

² Paper 27 is a redacted, public version of the third Motion to Seal. Paper 28 is an unredacted, confidential version of the third Motion to Seal.

In its Motions to Seal, Petitioner identifies three categories of information in the exhibits and pleadings that Petitioner wishes to have sealed. *E.g.*, Paper 27, 3. In the first category, Petitioner asserts that the identities of its members constitute confidential information that should remain sealed. Paper 12, 2; Paper 17, 2–3; Paper 27, 3; Paper 30, 4–7. In the second category, Petitioner asserts that its membership terms and business strategy constitute confidential information that should remain sealed. Paper 12, 2; Paper 17, 3; Paper 27, 3; Paper 30, 3. In the third category, Petitioner asserts that its financial information constitutes confidential information that should remain sealed. Paper 27, 3. We address each of these categories separately below.

In connection with the Motions to Seal, Petitioner has filed a Protective Order stipulated to by the parties. Ex. 1014. We address the Protective Order after the Motions to Seal.

II. Discussion

The record for an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. The Office Trial Practice Guide provides that:

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.

77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012).

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54. There is a strong public policy that favors making information filed in *inter partes* review proceedings open to the public. See *Garmin International v. Cuozzo Speed Technologies, LLC*, Case IPR2012-00001, slip op. at 1-2 (PTAB March 14, 2013) (Paper 34) (discussing the standards of the Board applied to motions to seal). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c).

a. Identities of Petitioner’s Members

Petitioner asserts multiple reasons in support of its contention that the identities of its members should remain under seal. Petitioner argues that the identities of its members should remain under seal because of concerns that Petitioner’s members would experience retaliation from non-practicing entities (“NPEs”) if the identities of the members became public. Paper 12, 2, 4; Paper 17, 2–4; Paper 27, 7; Paper 30, 6. Patent Owner counters that this argument is speculative and unsupported by evidence that Petitioner’s members would suffer any retaliation if their identities became public. Paper 22, 5–7.

Petitioner further argues that the list of its members is a trade secret, and that the “*Office Patent Trial Practice Guide* (‘*OPTP Guide*’) explains that rule 37 C.F.R. § 42.54 identifies ‘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.’” Paper 27, 4 (citing *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012)). Asserting that California state law governs the agreements with its members, Petitioner states that a trade secret under California law “includes (a) information (b) which is valuable because unknown to others and (c) which the owner has attempted to keep a secret.” Paper 27, 4 (citing *ABBA Rubber Co. v. Seaquist*, 286 Cal. Rptr. 518, 526 (Cal. Ct. App. 1991)). Petitioner

argues that it meets this test with respect to the list of its members. Paper 27, 5–8; Paper 30, 5–7.

Petitioner contends that the list of its members would be valuable to NPEs because NPEs could use the list of members to identify litigation targets. Paper 27, 5–7; Paper 30, 5–7. Petitioner argues that “[Petitioner]’s current membership list contains economic value because it would provide NPEs with the means to identify companies that were concerned about NPE litigation, retaliate against them, and hurt [Petitioner]’s ability to deter NPEs.” Paper 27, 7; Paper 30, 6.

Patent Owner argues that Petitioner does not demonstrate that the list of its members is a trade secret. Paper 35, 1–2. In particular, Patent Owner argues that Petitioner does not provide sufficient evidence to support its assertion that the list of Petitioner’s list of members meets the test for a trade secret under California law. *Id.*

Consistent with Patent Owner’s assertion, Petitioner has cited limited evidence to support its concerns about retaliation against its members. For example, in the Third Motion to Seal, Petitioner cites evidence that its members fear retaliation. Paper 27, 6. At the same time, the fact that “the ’444 patent, has been asserted against ten companies in district court patent infringement proceedings” (Paper 14, 1) illustrates a reasonable basis for concerns about litigation.

In addition to Petitioner’s needs in protecting the identities of its members, we must consider the public’s interest in maintaining a complete and understandable file history of this case. 77 Fed. Reg. at 48,760. We agree with Patent Owner that if any of Petitioner’s members are real parties-in-interest in the present case, the identities of those members needs to be disclosed to the public. As explained in our decision instituting *inter partes* review, however, the current record does not demonstrate that any of Petitioner’s members are real parties-in-

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