Paper No.________

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CISCO SYSTEMS, INC. AND QUANTUM CORPORATION,
Petitioners,

v.

CROSSROADS SYSTEMS, INC.,
Patent Owner

____

Case IPR2014-01544
Patent No. 7,051,147

____

PETITIONERS' OPPOSITION TO PATENT OWNER'S MOTION TO SEAL

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I. Introduction

Petitioners Cisco Systems, Inc. and Quantum Corporation oppose Patent Owner's Motion to Seal, in which Patent Owner broadly requests that Exhibits 2040, 2042, 2044 and 2045 (over 800 pages of material) be sealed as containing "confidential commercial information." Motion to Seal at 1.

Patent Owner's Motion to Seal fails at its core—it seeks to seal information that cannot be sealed—and, thus, should be denied.

II. Relief Requested

Petitioners ask that the Board deny Patent Owner's Motion to Seal.

III. Applicable Legal Principles for Sealing Confidential Information

As the moving party, Patent Owner bears the burden of proof to establish that it is entitled to the requested relief—that is, to have Exhibits 2040, 2042, 2044 and 2045 sealed from the public. 37 C.F.R. § 42.20(c). The standard for the Board to grant Patent Owner's request is "good cause." 37 C.F.R. § 42.54. The good cause standard requires taking into account the strong public policy for making all information filed in *inter partes* review proceedings open to the public. *Garmin Int'l v. Cuozzo Speed Technologies, LLC*, IPR2012-00001, Paper 37 at 3 (PTAB April 5, 2013). Thus, Patent Owner can only meet its burden to show good cause by showing that Patent Owner's interest in "confidentiality outweighs the strong public interest in having an open record." *Smith & Nephew, Inc. v. Convatec Technologies, Inc.*, IPR2013-00102, Paper 86 at 2 (PTAB May 19, 2014); *Office*

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Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

IV. Good Cause Does Not Exist for Sealing the Exhibits

A. The Exhibits are Substantive to a Patentability Issue and Therefore Cannot Be Sealed

Patent Owner argues for the patentability of its claims by asserting that Exhibits 2040, 2042, 2044 and 2045 show "[c]ommercial success [that] supports a finding of nonobviousness." *See* Patent Owner's Response, Paper 20 at 52. In fact, Patent Owner presents Exhibits 2040, 2042, 2044 and 2045 as evidence that may "be the most probative and cogent evidence in the record." *Id.* at 50. Nevertheless, Patent Owner seeks to keep this evidence a secret from the public.

The "public has an interest in knowing what information [Patent Owner] believes is important in determining a substantive issue in the case." *Garmin Int'l*, Paper 37 at 10. In this case, the public has a strong interest in knowing the "most probative and cogent evidence" regarding the issue of patentability. Rather than addressing the public's strong interest, Patent Owner merely argues that a motion to seal should be "non-controversial." Motion to Seal at 2 (relying upon *HBPSI-Hong Kong*).

Patent Owner's reliance upon the *HBPSI-Hong Kong* case is misplaced. In *HBPSI-Hong Kong,* the Board sealed a "Settlement and License Agreement" that pertained to whether the petitioner was a "successor-in-interest" to the agreement and therefore prohibited from seeking *inter partes* review. *HBPSI-Hong Kong Ltd.*

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v. SRAM, LLC, IPR2013-00174, Paper 14 at 5-7 (PTAB June 7, 2013); *HBPSI-Hong Kong,* Paper 19 (PTAB June 11, 2013). However, unlike *HBPSI-Hong Kong*, Patent Owner in the present case is not seeking to seal documents related to a tangential issue, but rather seeking to seal documents directly pertaining to patentability.

When seeking to seal documents pertaining to patentability, the Board set forth the appropriate standard in *Garmin Int'l.* In *Garmin Int'l,* the Board denied a renewed motion to seal with respect to "exhibits [that] were submitted on [patent owner's] own initiative to support [patent owner's] contention that its claims are patentable over the cited prior art." *Garmin Int'l,* Paper 37 at 9-10. The patent owner argued that the exhibits were protected by attorney client privilege, which the Board determined was insufficient reason to seal the exhibits:

> "In support of a substantive argument, [patent owner] on its own volition filed Exhibits I and J, thus waiving-attorney client privilege and the confidentiality associated with such privilege. The public has an interest in knowing what information [patent owner] believes is important in determining a substantive issue in the case…The Board should not undermine the public's interest in having open access to pertinent information, simply for the purpose of making [patent owner's] litigation strategy of choice less costly to [patent owner]."
> *Id.* at 10.

Garmin Int'l has repeatedly been applied to other cases to deny motions to

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