

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC.,
Petitioner,

v.

SUMMIT 6 LLC,
Patent Owner.

Case IPR2015-00806
Patent 7,765,482 B2

Before HOWARD B. BLANKENSHIP, GEORGIANNA W. BRADEN, and
KERRY BEGLEY, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

DECISION

Patent Owner's Motion to Seal
37 C.F.R §§ 42.14 and 42.54

INTRODUCTION

Patent Owner filed a Motion to Seal¹ (Paper 29) that seeks to seal a contractual agreement between Patent Owner and a third party (Exhibit 2047) and the Declaration of Scott Lewis (Exhibit 2050). Petitioner did not file an Opposition to Patent Owner's Motion to Seal. For reasons discussed below, Patent Owner's Motion to Seal (Paper 29) is *conditionally granted* as to Exhibit 2047, but *denied* without prejudice as to Exhibit 2050.

DISCUSSION

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; a party, however, may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. It is, however, only "confidential information" that is protected from disclosure. 35 U.S.C. § 316(a)(7). In that regard, the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012) 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.

...

Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil

¹ Patent Owner filed a duplicate Motion to Seal as Paper 30. All citations in this Order are to Paper 29.

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.” 37 C.F.R. § 42.54(a). In Patent Owner’s Motion to Seal (Paper 29), Patent Owner bears the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c). The Board needs to know why the information sought to be sealed constitutes confidential information.

In Patent Owner’s Motion to Seal, Patent Owner moves to seal Exhibit 2047 because the exhibit “contains confidential business information” that “is not publicly known and should remain confidential.” Paper 29, 1. Patent Owner also moves to seal Exhibit 2050, which is the Declaration of Scott Lewis. *Id.* According to Patent Owner, Mr. Lewis references confidential and propriety information about Patent Owner’s business and financial information. *Id.* Patent Owner has not submitted a redacted version of the exhibits that are the subject of Patent Owner’s Motion to Seal (Paper 29).

As discussed previously, there is a strong public policy for making all information filed in an *inter partes* review open to the public. Upon review of Exhibit 2047 and stated confidentiality of the document by Patent Owner, rather than denying the Motion to Seal with regards to this exhibit, which would make the exhibit immediately publicly accessible, the Board *conditionally* grants Patent Owner’s Motion to Seal Exhibit 2047 (Paper 29) for the duration of this proceeding. If the Board’s final written decision substantively relies on any information in the sealed exhibit, that exhibit will be unsealed by an Order of the Board, and if the sealed exhibit contains no information substantively relied on by the Board in the final written

decision, then the exhibit may be expunged from the record by an Order of the Board.

Finally, we are not persuaded that Patent Owner has carried its burden to demonstrate that Exhibit 2050, in its entirety, is confidential information that should be sealed. We recognize a denial of Patent Owner's motion would immediately unseal the material Patent Owner desires to be placed under seal and the effect would be irreversible. Therefore, rather than denying the motion with regards to Exhibit 2050 at this time, we will provide Patent Owner two weeks to (1) supplement the Motion to Seal, (2) withdraw the Motion to Seal and request to expunge Exhibit 2050, or (3) supplement the Motion to Seal, request to expunge Exhibit 2050, and replace it with a redacted version that leaves out the confidential information.

CONCLUSION

For the foregoing reasons, Patent Owner's Motion to Seal (Paper 29) is *conditionally* granted-in part and denied-in-part. It is

ORDERED that with respect to Exhibit 2047, Patent Owner's Motion to Seal (Paper 29) is *conditionally* granted and the exhibit will be kept under seal unless and until the Board refers to material in the exhibit in a final written decision;

FURTHER ORDERED that the Exhibit 2050 will be made available to the public after 5PM Eastern on Friday, April 1, 2016, unless on or prior to that time, Patent Owner (1) supplements the Motion to Seal, (2) withdraws the Motion to Seal and requests to expunge Exhibit 2050, or (3) supplements the Motion to Seal, and requests to expunge Exhibit 2050 and

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replace it with a redacted version that leaves out the confidential information;

FURTHER ORDERED that any supplement or revision that Patent Owner chooses to file should include a detailed discussion that:

Specifies precisely, for Exhibit 2050, which portions of the information in that exhibit constitute confidential information under the Office Trial Practice Guide quoted above, **and** why; and

Explains why good cause exists to place the entirety of Exhibit 2050 under seal; or

Explains that only the portions of the exhibit that constitutes confidential information under the Office Trial Practice Guide quoted above has been redacted; and

FURTHER ORDERED that the explanation of good cause shall:

Include a certification that none of the alleged confidential information in Exhibit 2050 has been made available publically.

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