

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BUNGIE, INC.,
Petitioner,

v.

WORLDS INC.,
Patent Owner.

Case IPR2015-01264 (Patent 7,945,856 B2)
Case IPR2015-01319 (Patent 8,082,501 B2)
Case IPR2015-01321 (Patent 8,145,998 B2)

Before KARL D. EASTHOM, KEN B. BARRETT, and
JASON J. CHUNG, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Unopposed Motion to Seal and
Entry of Protective Order
37 C.F.R. § 42.54

IPR2015-01264 (Patent 7,945,856 B2)
IPR2015-01319 (Patent 8,082,501 B2)
IPR2015-01321 (Patent 8,145,998 B2)

Patent Owner filed, in each of the above-captioned cases, an unopposed motion to seal certain portions of “Petitioner Bungie’s Brief on Remand from CAFC” (*e.g.*, IPR2015-01264, Paper 51; “Petitioner’s Brief on Remand”). IPR2015-01264, Paper 54; IPR2015-01319, Paper 54; and IPR2015-01321, Paper 55. We previously, in response to Patent Owner’s request, placed the subject brief under seal pending resolution of the present motion. *See* Paper 53.¹ Patent Owner also filed in each case a proposed Protective Order and, as an exhibit, a copy of the subject brief showing Patent Owner’s proposed redactions on pages 18–19. *E.g.*, IPR2015-01264, Exhibits 2100, 2101. Patent Owner represents that Petitioner does not oppose this motion. Paper 54, 1.

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. *See Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, Case IPR2012-00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). 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; however, a party may file a motion to seal and the information at issue is sealed pending the outcome of the motion. It is only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7); *see* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756,

¹ Unless otherwise indicated, we refer to the papers and exhibits filed in IPR2015-01264. Patent Owner filed substantively the same or similar papers and exhibits in the other cases listed in the caption.

IPR2015-01264 (Patent 7,945,856 B2)
IPR2015-01319 (Patent 8,082,501 B2)
IPR2015-01321 (Patent 8,145,998 B2)

48,760 (Aug. 14, 2012). The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The party moving to seal bears the burden of proof in showing entitlement to the requested relief and must explain why the information sought to be sealed constitutes confidential information. *See* 37 C.F.R. § 42.20(c). As set forth in the Trial Practice Guide (77 Fed. Reg. at 48,761), there is an expectation that information will be made public if identified in the Final Written Decision.

Patent Owner explains that it seeks to seal certain portions of Petitioner’s Brief on Remand—namely, that which Petitioner contends is quoted material contained in what is characterized as Statements of Material Fact Nos. 7, 10, and 11—because those portions contain information that “[Petitioner] Bungie contends are quoted contents (including ‘terms’) of settlement communications between Bungie’s counsel and Worlds’ counsel.” Paper 54, 2–3. Patent Owner asserts that such information falls within the category of business confidential information and that it should not be revealed to the public. *Id.* Specifically, Patent Owner notes that the Board frequently grants motions to treat executed settlement agreements as business confidential information, *see id.* at 3–4, and argues, “[j]ust as an executed settlement agreement deserves protection from unsealed filings and public disclosure, so do Bungie’s [statements characterized as settlement communications]. *Id.* at 4. Patent Owner further argues:

As a policy matter, it would do little good to treat a settlement agreement as business confidential information, but permit unsealed filing of settlement discussions leading to that settlement agreement. Moreover, the risk of permitting unsealed filing of settlement communications is likely to chill such

IPR2015-01264 (Patent 7,945,856 B2)
IPR2015-01319 (Patent 8,082,501 B2)
IPR2015-01321 (Patent 8,145,998 B2)

settlement communications from even occurring in the first place.

Id. at 4–5.

On the specific facts of this case, we determine that Patent Owner has demonstrated good cause for sealing portions of Petitioner’s Brief on Remand in the above-captioned cases.

Additionally, we have reviewed the proposed Protective Order, which we understand to be the Board’s Default Protective Order (Ex. 2100), and find it acceptable.

We remind the parties that confidential information that is subject to a protective order ordinarily would become public after final judgment in a trial. *See* 37 C.F.R. § 42.14; Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,761. The parties may move to expunge confidential information from the record after final judgment (and appeals, if any). 37 C.F.R. § 42.56.

It is

ORDERED that Patent Owner’s unopposed motion to seal is *granted*; and

FURTHER ORDERED that the unredacted version of “Petitioner Bungie’s Brief on Remand from CAFC” (IPR2015-01264, Paper 51; IPR2015-01319, Paper 51; and IPR2015-01321, Paper 52) shall remain under seal;

FURTHER ORDERED that the protective order submitted by Patent Owner (Ex. 2100 in each captioned case) is hereby *entered*; and

IPR2015-01264 (Patent 7,945,856 B2)

IPR2015-01319 (Patent 8,082,501 B2)

IPR2015-01321 (Patent 8,145,998 B2)

FURTHER ORDERED that Patent Owner shall file, as a paper in each captioned case, the redacted version of “Petitioner Bungie’s Brief on Remand from CAFC.”

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