

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RPX CORPORATION,
Petitioner,

v.

APPLICATIONS IN INTERNET TIME, LLC,
Patent Owner.

Case IPR2015-01751
Patent 7,356,482 B2

Before LYNNE E. PETTIGREW, MITCHELL G. WEATHERLY, and
JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

CHAGNON, *Administrative Patent Judge*.

DECISION

Conduct of the Proceedings

37 C.F.R. § 42.5

Dismissing Patent Owner's Motions to Seal

Granting Petitioner's Motions to Seal

37 C.F.R. § 42.14

Patent Owner filed Motions to Seal accompanying its Preliminary Response and its Sur-Reply. *See* Paper 19 (“PO First Mot.”); Paper 36 (“PO Second Mot.”). Petitioner filed Motions to Seal accompanying its Reply and its Motion for Sanctions, as well as an additional Motion to Seal, as authorized in Paper 42. *See* Paper 27 (“Pet. First Mot.”); Paper 31 (“Pet. Second Mot.”); Paper 45 (“Pet. Third Mot.”). As also authorized in Paper 42, Patent Owner filed an Opposition to Petitioner’s Third Motion to Seal. *See* Paper 49 (“PO Opp. to Third Mot.”). The Default Protective Order previously has been entered in this case. Paper 50; Ex. 1017.

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 sealed provisionally until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. There is a strong public policy for making all information filed in an *inter partes* review open to the public. *Garmin Int’l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a). The party moving to seal bears the burden of proof of showing entitlement to the requested relief, and establishing that the information sought to be sealed is confidential information. 37 C.F.R. § 42.20(c).

Patent Owner’s Motions to Seal

In its first Motion to Seal, Patent Owner seeks to seal Exhibits 2018, 2019, and 2022 in their entirety. PO First Mot. 1. Patent Owner also seeks to seal portions of its Preliminary Response (Paper 20) that reference and discuss these exhibits. PO First Mot. 1. Patent Owner has filed a non-confidential, redacted version of its Preliminary Response (Paper 26

(redacted version)). In its Second Motion to Seal, Patent Owner seeks to seal Exhibits 2025 and 2026 in their entirety. PO Second Mot. 1. Patent Owner also seeks to seal portions of its Sur-Reply (Paper 38) that reference and discuss these exhibits. PO Second Mot. 1. Patent Owner has filed a non-confidential, redacted version of its Sur-Reply (Paper 37 (redacted version)).

Patent Owner asserts that the referenced exhibits should be sealed because the exhibits were designated as Protective Order Material by Petitioner, or incorporate information from such documents. PO First Mot. 1; PO Second Mot. 1. Patent Owner also asserts its Preliminary Response and Sur-Reply should be sealed because they refer to and discuss the sealed exhibits. PO First Mot. 1; PO Second Mot. 1. Because the information Patent Owner's Motions to Seal seek to seal is Petitioner's confidential information, and because Petitioner filed motions to seal addressing this information, Patent Owner's Motions to Seal are *dismissed as moot*.

Petitioner's First Motion to Seal

In its first Motion to Seal, Petitioner seeks to seal portions of Exhibit 1019, as well as Exhibits 1020–1025 in their entirety. Pet. First Mot. 1–4. Petitioner also seeks to seal portions of the Reply (Paper 28) that reference and discuss these exhibits. Pet. First Mot. 1–4. Petitioner has filed non-confidential, redacted versions of Exhibit 1019 and its Reply (Paper 29 (redacted version)).

According to Petitioner, these exhibits and the Reply “contain highly confidential and extremely sensitive information, including *inter alia*, highly confidential IPR litigation strategy that RPX employs to pursue its business,

and highly confidential agreements and communications records.” Pet. First Mot. 1. Petitioner further asserts that it “guards this information to protect its own business as well as third parties and is contractually obligated to keep certain agreements confidential.” *Id.* at 1–2.

A summary of Petitioner’s assertions regarding each of the exhibits that is the subject of Petitioner’s first Motion to Seal is included in the following table:

Exhibit No.	Petitioner’s Reasons for Sealing
1019	“describes RPX’s IPR litigation strategy” (Pet. First Mot. 2); “summarizes confidential communications and agreements” (<i>id.</i>)
1020–1022	“confidential agreements [that] detail confidential aspects of business relationships and by their explicit terms require that RPX treat them as confidential” (<i>id.</i>)
1023, 1025	“post-filing confidential communications between RPX and a third party that refer to terms of confidential agreements and sensitive, improper disclosures of confidential information by Patent Owner” (<i>id.</i> at 3)
1024	“confidential RPX business records that reveal RPX’s IPR litigation strategy” (<i>id.</i>)

Petitioner’s counsel further “certifies that the information sought to be sealed by this motion has not been published or otherwise made public to the best of his knowledge.” Pet. First Mot. 4. Petitioner asserts that it has “tailored the redactions in the Reply and Ex. 1019 as narrowly as possible.” *Id.* at 3.

Patent Owner did not file an opposition to Petitioner’s first Motion to Seal. Upon considering the content of Exhibits 1019–1025 and Petitioner’s Reply, along with Petitioner’s representations as to the confidentiality of the information, we determine that Petitioner has shown good cause for sealing

Exhibits 1020–1025, as well as the redacted portions of Exhibit 1019 and the Reply. Accordingly, Petitioner’s first Motion to Seal (Paper 27) is *granted*.

Petitioner’s Second Motion to Seal

In its Second Motion to Seal, Petitioner seeks to seal Exhibits 1029, 1031–1035, 1037–1043, and 1046 in their entirety. Pet. Second Mot. 1–5. Petitioner also seeks to seal portions of its Sanctions Motion (Paper 34) that reference and discuss these exhibits. Pet. Second Mot. 1–5. Petitioner has filed a non-confidential, redacted version of its Sanctions Motion (Paper 32 (redacted version)).

According to Petitioner, these exhibits and the Sanctions Motion “contain highly confidential and extremely sensitive information, including *inter alia*, highly confidential IPR litigation strategy that RPX employs to pursue its business, and highly confidential agreements and communications records, and highly sensitive details about how AIT failed to protect RPX’s confidential information.” Pet. Second Mot. 2. Petitioner further asserts that it “guards its confidential information to protect its own business as well as third parties and is contractually obligated to keep certain agreements confidential.” *Id.*

A summary of Petitioner’s assertions regarding the exhibits that are the subject of Petitioner’s Second Motion to Seal is included in the following table:

Exhibit No.	Petitioner’s Reasons for Sealing
1029, 1031–1033, 1035, 1038, 1039, 1042, 1043	“email exchanges between counsel for RPX and counsel for AIT that discuss RPX’s confidential business information and include sensitive details about how AIT failed to protect RPX’s confidential information” (Pet. Second Mot. 3)

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