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IPR2015-01750, Paper 122
IPR2015-01751, Paper 122
IPR2015-01752, Paper 120
Date: August 24, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RPX CORPORATION,
Petitioner,

v.

APPLICATIONS IN INTERNET TIME, LLC,
Patent Owner.

IPR2015-01750
Patent 8,484,111 B2

IPR2015-01751
IPR2015-01752
Patent 7,356,482 B2¹

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

CHAGNON, *Administrative Patent Judge*.

ORDER

Granting Petitioner's Motions to Seal
37 C.F.R. §§ 42.5, 42.14, 42.54

¹ This Order addresses issues common to all identified cases; therefore, we issue a single order to be entered in each case.

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I. INTRODUCTION

RPX Corporation (“Petitioner”) filed a Fourth Motion to Seal (Paper 97,² “Fourth Mot.”), a Fifth Motion to Seal (Paper 105, “Fifth Mot.”), and a Sixth Motion to Seal (Paper 114, “Sixth Mot.”). Patent Owner did not file an opposition to any of Petitioner’s Fourth, Fifth, or Sixth Motions to Seal. A Revised Protective Order previously has been entered in this proceeding. Paper 58; Ex. 3001.

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 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 Int’l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, Paper 34 at 1–2 (PTAB Mar. 14, 2013) (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). That includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. *See Garmin* at 3.

Petitioner certifies that “RPX has in good faith conferred with Patent Owner about sealing RPX’s confidential information.” Fourth Mot. 13;

² For expediency, we refer to the Exhibits and Papers filed in IPR2015-01750. The same Exhibits and Papers were filed in each proceeding. We include in the Appendix a chart showing the corresponding paper and exhibit numbers for each proceeding.

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Fifth Mot. 11; Sixth Mot. 12. In each motion, 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 her knowledge.”
Fourth Mot. 13; Fifth Mot. 11; Sixth Mot. 11.

II. PETITIONER’S FOURTH MOTION TO SEAL

In its Fourth Motion to Seal, Petitioner seeks to seal the entirety of Exhibits 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1091, and 1092; portions of Petitioner’s Opening Brief (Paper 98); and portions of Exhibits 1073, 1090, 1094, 1095. *See generally* Fourth Mot. Petitioner asserts that these documents “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, financial information, communication records, and references thereto.” *Id.* at 2. Petitioner asserts that “RPX guards its confidential information to protect its own business as well as third parties, and is contractually obligated to keep certain of this information confidential.” *Id.*

For the reasons discussed in the following, Petitioner’s Fourth Motion to Seal is *granted*.

A. Exhibits 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1091, and 1092

Petitioner asserts there is good cause to seal Exhibits 1074, 1075, 1076, 1077, 1078, 1079, 1080, in their entirety, because these exhibits contain “highly confidential and sensitive financial terms,” “confidential aspects of business relationships,” or “sensitive pricing information, purchase terms, purchased products and/or services, as well as personal

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information.” Fourth Mot. 5. Petitioner asserts there is good cause to seal Exhibit 1081 in its entirety because it “is (or is derived from) confidential RPX business records that reveal detailed financial terms of the confidential agreements.” *Id.* at 7. Petitioner asserts there is good cause to seal Exhibits 1091 and 1092, in their entirety, because they are “post-filing confidential communications between RPX and Salesforce that refer to terms of confidential agreements and disclosure of sensitive, confidential information in these Remand Proceedings.” *Id.* at 8. Petitioner further asserts that these Exhibits “are composed entirely of sensitive confidential information and cannot be effectively redacted in a manner that would provide any meaningful content to the public without exposing confidential information.” *Id.* at 3.

Upon consideration of Exhibits 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1091, and 1092, along with Petitioner’s representations of the confidentiality of the information contained therein, and the pervasiveness of the confidential information in each document, we are persuaded Petitioner has shown good cause for sealing Exhibits 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1091, and 1092 in their entirety.

B. Petitioner’s Opening Brief & Exhibits 1073, 1090, 1094, and 1095

Petitioner asserts that there is good cause to seal portions of its Opening Brief (Paper 98) and Exhibits 1073, 1090, 1094, and 1095 because they “reference sensitive confidential information, including information from [the confidential Exhibits discussed above in Section II.A] and other sensitive documents that the Board has already sealed in these proceedings in response to one or more previous motions to seal filed by Petitioner.”

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Fourth Mot. 3; *see also id.* at 5–6, 8–11 (detailing the locations of specific confidential information). Petitioner filed redacted versions of its Opening Brief (Paper 95), and of Exhibits 1073, 1090, 1094, and 1095, and states that “[t]o ensure that the public has access to a complete and understandable file history without disclosing RPX’s confidential information, Petitioner has tailored its redactions as narrowly as possible.” Fourth Mot. 3.

Upon review of Petitioner’s Opening Brief and Exhibits 1073, 1090, 1094, and 1095, and the redacted versions thereof, we are persuaded good cause exists to maintain under seal the redacted portions of Petitioner’s Opening Brief³ and Exhibits 1073, 1090, 1094, and 1095.

As noted above, Petitioner’s Fourth Motion to Seal is *granted*.

III. PETITIONER’S FIFTH MOTION TO SEAL

In its Fifth Motion to Seal, Petitioner moves to seal portions of Patent Owner’s Opposition Brief (Paper 100), portions of Petitioner’s Reply Brief (Paper 101), and portions of Exhibit 1096. *See generally* Fifth Mot. Petitioner asserts there is good cause to seal these documents because they “reference sensitive confidential information, including information from [the confidential Exhibits discussed above in Section II.A] and from other sensitive documents that the Board has already sealed in these proceedings in response to one or more previous motions to seal filed by Petitioner.” *Id.*

³ Regarding the redacted text on page 34 of the Opening Brief, Petitioner explains that “the redacted text in the Opening Brief at 34 corresponds to personal information that need not be injected into the public record here.” Fourth Mot. 12. Although this information is not confidential, we agree with Petitioner that the redacted information is unnecessary to understand the issues in this proceeding and allow this redaction to remain. *See* 37 C.F.R. § 42.5.

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