

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC.,
ELECTRONIC ARTS INC.,
TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K SPORTS, INC.,
ROCKSTAR GAMES, INC., and
BUNGIE, INC.,
Petitioner,

v.

ACCELERATION BAY, LLC,
Patent Owner.

Case IPR2015-01972¹
Patent 6,701,344

**PATENT OWNER'S MOTION TO SEAL CERTAIN EXHIBITS UNDER 37
C.F.R. § 42.14**

¹ Bungie, Inc., who filed a Petition in IPR2016-00934, has been joined as a petitioner in this proceeding.

Pursuant to 37 C.F.R. § 42.14, Patent Owner, Acceleration Bay, LLC, (“Acceleration Bay”) hereby moves certain Exhibits (collectively referred to herein as the “Subject Exhibits”) under the Default Protective Order which are identified below:

Filing/Exhibit	Content	Confidential Information ²
Exhibit 2109	Deposition Transcript of Dr. David Karger	Contains highly confidential information regarding internal research and development efforts of a third party.

I. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

The Board’s standards for granting motions to seal are discussed in *Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001 (Paper 34 at 4-5, Mar. 14, 2013). The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). In particular:

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.

* * *

² Further details regarding the confidential information regarding each of the exhibits identified in this chart are explained *infra* at § I.

Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.

35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54; Office Trial and Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

Acceleration Bay's Subject Exhibits contain confidential information requiring that they be designated as "PROTECTIVE ORDER MATERIAL" under Default Protective Order. The Subject Exhibits each contain highly confidential information of a third party. Specifically, each discuss and reveal confidential information regarding either or both (1) The Boeing Company's ("Boeing") highly confidential internal information relating to the conception and development of the subject patent including an Invention Disclosure Form by the inventors and first assignee, Boeing. The confidential information disclosed in each of the Subject Exhibits is outlined in the chart above.

The sealing of the foregoing is of particular importance because the public disclosure of such "truly sensitive information" would impact Boeing's competitive position in the market. In particular, information regarding certain Boeing's internal research and development efforts and strategies at Boeing, would allow competitors to access information that would significantly harm Boeing's competitive position in the marketplace.

Furthermore, and notwithstanding the foregoing, granting this Motion would not prejudice nor impact this underlying proceeding. The public's interest in accessing the information requiring that the Subject Exhibits be sealed for the purposes of the patentability of the challenged claims is unquestionably outweighed by the prejudicial effect and competitive harm of disclosing the above described confidential business information of third party, Boeing.

II. CERTIFICATION OF NON-PUBLICATION

To the best of Acceleration Bay's knowledge, the confidential information contained in the Subject Exhibits has not been made publicly available.

III. V. CONCLUSION AND RELIEF REQUESTED

Accordingly, good cause exists to seal Acceleration Bay's Subject Exhibits from public disclosure under the Default Protective Order.

Respectfully submitted,

Dated: November 10, 2016

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(Case No. IPR2015-01972)

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