

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARISTA NETWORKS, INC.,
Petitioner,

v.

CISCO SYSTEMS, INC.,
Patent Owner.

Case IPR2016-00309
Patent 7,224,668 B1

Before BRYAN F. MOORE, MIRIAM L. QUINN, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

CLEMENTS, *Administrative Patent Judge*.

DECISION

Patent Owner's Motion to Seal
Petitioner's Motions to Seal
37 C.F.R. §§ 42.114 and 42.54

INTRODUCTION

There are three Motions to Seal pending in this case. Papers 20, 35, 46. The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. The party moving to seal bears the burden of proof of showing entitlement to the requested relief, and establishing that information sought to be sealed is confidential information. 37 C.F.R. § 42.20(c). For the reasons stated below, the Motions to Seal are granted.

ANALYSIS

Patent Owner’s Motion to Seal

Cisco Systems, Inc. (“Patent Owner”) filed a Motion to Seal (Paper 20 (“PO Motion” or “PO Mot.”) portions of Patent Owner’s Confidential Patent Owner Response (Paper 18) and seven exhibits. PO Mot. 1. Arista Networks, Inc. (“Petitioner”) does not oppose the Motion. Patent Owner also seeks entry of the Default Protective Order. PO Mot. 6.

Patent Owner asserts that Exhibits 2009, 2011, 2046, and 2047 contain highly sensitive financial and technical confidential business information. PO Mot. 2–4. Patent Owner asserts that Exhibits 2009 and 2047 detail confidential research and development, and internal testing, and that Patent Owner would be harmed if this information were made public. *Id.* at 2–3. Patent Owner asserts that Exhibit 2011 reveals highly confidential details regarding its legal procedures and financial commitments. *Id.* at 3. Patent Owner asserts that Exhibit 2046 contains guidelines for outside counsel that, if made public, would harm Patent Owner by giving third parties valuable insight into Patent Owner’s proprietary legal procedures.

Patent Owner asserts that Exhibits 2008, 2010, and 2012 are declarations referencing its confidential business information. PO Mot. 2, 4–5. Patent Owner asserts that Exhibit 2008 addresses the confidential information disclosed in Exhibits 2009 and 2011, that Exhibit 2010 contains confidential testimony regarding how Patent Owner maintains its billing records, guidelines, and technical documents, and that Exhibit 2012 addresses the confidential information disclosed in Exhibit 2011. *Id.*

Patent Owner also seeks to seal portions of its Confidential Patent Owner Response because it reveals confidential information from the above described exhibits. PO Mot. 5.

Upon considering the contents of the confidential Exhibits and of Patent Owner’s Response, along with Patent Owner’s representations as to the confidentiality of the information contained in these papers, we determine that Patent Owner has shown good cause for sealing these documents.

Petitioner’s Unopposed Motion to Seal its Reply

Petitioner filed an Unopposed Motion to Seal (Paper 35, “Pet. Reply Mot.”) portions of its Reply that discuss substantively materials designated by Patent Owner as for “Board and Parties’ Eyes Only” under the Default Protective Order. Pet. Reply Mot. 2. Petitioner asserts that, “[b]ecause the Patent Owner Response presents arguments based on information that Patent Owner has designated confidential, [Petitioner]’s Reply to the Patent Owner Response necessarily also contains information subject to Patent Owner’s confidentiality designations.” *Id.* at 3. Accordingly, “Petitioner moves the Board to seal those portions its Reply that refer to materials designated by

Patent Owner as for ‘the Board and Parties’ Eyes Only.’” *Id.* Patent Owner does not oppose the Motion. *Id.* at 2.

Upon considering Petitioner’s Reply, we determine that Petitioner has shown good cause for sealing this document.

Petitioner’s Unopposed Motion to Seal its Demonstratives

Petitioner filed an Unopposed Motion to Seal (Paper 46, “Pet. Demo. Mot.”) portions of its demonstratives (Exhibit 1029) that discuss substantively materials designated by Patent Owner as for “Board and Parties’ Eyes Only” under the Default Protective Order. Pet. Demo. Mot. 2. Patent Owner does not oppose the Motion. *Id.*

Upon considering Petitioner’s Demonstratives, we determine that Petitioner has shown good cause for sealing this document.

CONCLUSION

An expectation exists that confidential information will be made public where the existence of the information is identified in a final written decision following a trial. *See* Office Patent Trial Practice Guide at 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012)). “[A]fter final judgment . . . , a party may file a motion to expunge confidential information from the record.” 37 C.F.R. § 42.56.

The motions to seal are granted with the understanding that, if a final written decision substantively relies on any information in a sealed document, or if the information otherwise becomes publically available, the information may be unsealed by an Order of the Board or may become public if the parties do not to move timely to expunge it pursuant to

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37 C.F.R. § 42.56. *See also* Office Patent Trial Practice Guide at 77 Fed. Reg at 48,761 ¶ 6 (*Expungement of Confidential Information*).

ORDER

Accordingly, it is

ORDERED that the Default Protective Order is entered and governs the treatment and filing of confidential information in this proceeding;

FURTHER ORDERED that Patent Owner's Motion to Seal (Paper 20) is granted;

FURTHER ORDERED that Exhibits 2008–2012, 2046, and 2047 and Patent Owner's Confidential Patent Owner Response (Paper 18) are sealed and designated Board and Parties' Eyes Only;

FURTHER ORDERED that Petitioner's Confidential Reply (Paper 33) is sealed and designated Board and Parties' Eyes Only; and

FURTHER ORDERED that 1029, titled "Petitioner's Demonstrative Exhibits – CONFIDENTIAL," is sealed and designated Board and Parties' Eyes Only.

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