

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,

Petitioner,

v.

BRADIUM TECHNOLOGIES LLC,

Patent Owner.

PTAB Case No. IPR2016-00448

Patent No. 7,908,343 B2

**PETITIONER'S MOTION TO SEAL CONFIDENTIAL INFORMATION
AND REQUEST FOR ENTRY OF DEFAULT PROTECTIVE ORDER**

Pursuant to 37 CFR §§ 42.14 and 42.55, Petitioner Microsoft Corporation moves to seal certain exhibits which contain information designated as confidential subject to a protective order governing the litigation proceedings.

Petitioner respectfully requests entry of the default protective order set forth in the Office Patent Trial Practice Guide. An identical version of the default protective order was filed by Patent Owner as Paper No. 14. Microsoft Corporation and Bradium Technologies LLC have agreed to be bound by the default protective order and that it will govern this proceeding.

The Trial Practice Guide provides that “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.” 77 Fed. Reg. 48756 at 48760 (Aug. 14, 2012). Petitioner submits that this motion protects sensitive information while not significantly impacting the public’s interest in maintaining a complete and understandable record of this proceeding.

Good cause exists for this motion because the documents sought to be sealed contain Microsoft’s highly confidential business information. Specifically, all five documents purportedly relate to Microsoft’s preliminary discussions with a potential acquisition target, 3DVU, which was a prior assignee of patents related to

those challenged in this proceeding.¹ Exs. 2012 and 2013 are documents reflecting Microsoft's internal discussions regarding a potential acquisition, including potential pricing terms and Microsoft's policies regarding procedures for evaluating potential acquisitions, while Exs. 2014, 2015, and 2034 purportedly reflect confidential communications between Microsoft and the counter-party to those negotiations. The public release of these documents will cause competitive disadvantage and serious injury to Microsoft. For example, based on the pricing ranges disclosed in Exs. 2012 and 2013, a competitor of Microsoft or another acquisition target company will be able to estimate Microsoft's likely pricing range for other companies having similar size or similar technology as 3DVU, and thus put Microsoft at competitive disadvantage in future acquisition negotiations. Additionally, both Exs. 2012 and 2013 discuss strategic considerations and factors evaluated by Microsoft in making its acquisition decisions, such as how well the target company's technology can be integrated into and enhance existing Microsoft products. Revealing such strategic considerations to the public will also put Microsoft at competitive disadvantage for future acquisitions, because target companies meeting those strategic considerations or factors may demand a higher

¹ By filing this motion, Microsoft does not admit the authenticity of any of these documents or waive any other potential objections.

acquisition price if they become aware that Microsoft considers those factors as important in assessing acquisition targets. Likewise, Microsoft's communications with 3DVU, as reflected in Exhibits 2014, 2015, and 2034 reveal details of Microsoft's processes for considering acquisitions of other business entities, including the factors that Microsoft considers in such an acquisition, that might be exploited by a competitor or another entity desiring to be acquired by Microsoft.

The filing of these exhibits under seal will have negligible or no impact on the public's interest in maintaining a complete and understandable file history. Bradium relies on these documents in support of arguments relating to secondary indicia of non-obviousness. However, the specific details contained in the documents proposed to be sealed regarding Microsoft's deliberative process would not contribute in any meaningful way to a member of the public's understanding of the fundamental arguments made in this proceeding. Therefore, allowing these exhibits to be filed under seal is consistent with the Board's recognized need for a "balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information."

Petitioner certifies that it conferred with Bradium concerning the filing of Microsoft-designated confidential documents. Bradium does not oppose this motion.

Accordingly, Petitioner moves to seal the following:

Ex. 2012 Microsoft internal document relating to 3DVU evaluation

Ex. 2013 Microsoft internal document relating to 3DVU evaluation
(September, 2005)

Ex. 2014 Microsoft-3DVU Non-Disclosure Agreement and email (June-
August, 2005)

Ex. 2015 Email communications between Microsoft and 3DVU (September,
2005)

Ex. 2034 Document relating to Microsoft-3DVU discussions

For the foregoing reasons, Petitioner respectfully requests that the Board seal
and protect Exhibits 2012-2015 and 2034.

Dated: November 8, 2016

Respectfully submitted,

/Bing Ai /

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