

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,

Petitioner,

v.

BRADIUM TECHNOLOGIES LLC,

Patent Owner.

Case IPR2016-00449

Patent No. 8,924,506 B2

**JOINT MOTION TO MAINTAIN DOCUMENTS AS CONFIDENTIAL OR
EXPUNGE**

Paper No. 68

Pursuant to 37 C.F.R. §§ 42.14 and 42.56, Petitioner Microsoft Corporation and Patent Owner Bradium Technologies, LLC (collectively the “Parties”) jointly move to (1) maintain under seal, pending the conclusion of any appeal, the confidential documents of both Parties previously ordered sealed by the Board and referenced by the Board in its Final Written Decision, and (2) expunge the confidential documents previously ordered sealed by the Board and not referenced by the Board in its Final Written Decision.

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). The Parties submit that this motion protects sensitive information and the Parties’ need to maintain a complete record for appeal while not significantly impacting the public’s interest in maintaining a complete and understandable record of this proceeding.

15 **I. Background**

On November 11, 2017 and November 15, 2017, the Parties filed separate motions to seal certain documents filed by Patent Owner Bradium in support of its Patent Owner Response. The documents which the Parties requested to seal contain commercially sensitive information for both Parties for the reasons discussed further below. The Board relied on some, but not all, of these documents

in its Final Written Decision (Paper 67), which is part of the public record.

Concurrently with its Final Written Decision, the Board granted the Parties' motions to seal, finding that both sides had presented good cause to seal the documents, and decided to "maintain the confidentiality of the documents and

5 leave the decision to move to expunge documents not relied upon in the Final Written Decision" up to the Parties. Paper 64 at 3, 5.

A. Microsoft Confidential Documents

Petitioner moved to seal Exhibits 2012-2015 and 2034, which relate to brief discussions in 2005 regarding a potential acquisition by Microsoft of a prior owner
10 of the '506 Patent, 3DVU. Paper 18. Of these exhibits, the Board referenced Exs. 2012, 2013, 2015, and 2034 briefly in its Final Written Decision, but not Ex. 2014. As Petitioner explained in its motion to seal, these documents discuss strategic considerations and factors utilized by Microsoft in making acquisition decisions, including pricing considerations and details of Microsoft's internal deliberative
15 processes, all of which could be exploited by other Parties to Microsoft's disadvantage if such information became public.

While Patent Owner relied on these documents in support of its secondary indicia of non-obviousness arguments, the Board concluded in its Final Written Decision that Patent Owner had not established a technical nexus between these
20 discussions and the technology embodied in the '506 Patent. Paper 67 at 69-70.

The details of Microsoft's deliberation process discussed in these documents therefore would not meaningfully aid a member of the public to understand the basis of the Board's decision.

B. Bradium Confidential Documents

5 Patent Owner moved to seal Exhibits 2022, 2029, and 2082, as well as portions of Exhibit 2004. *See* Paper 15; Paper 54. Patent Owner also moved to seal portions of Paper 16 (Patent Owner's Response), portions of Paper 49 (Opposition to Petitioner's Motion to Exclude), and portions of Paper 55 (Reply to
10 Petitioner's Opposition to Patent Owner's Motion to Exclude) on the basis that they reference confidential Exhibits or confidential information in Exhibits. *See* Paper 15; Paper 48, Paper 54.

The Board did not cite Exhibits 2022, Exhibit 2029, Exhibit 2082, or the confidential portions of Exhibit 2004 in its Final Written Decision. Paper 64 at 5. These documents would therefore not meaningfully aid a member of the public to
15 understand the basis of the Board's decision.

The confidential version of the Patent Owner Response (Paper 16) reference Microsoft confidential information in Exhibits that the Board previously ordered sealed (Paper 64).

Exhibit 2022 is a confidential project report stamped "COMMERCIAL-IN-
20 CONFIDENCE" which contains comprehensive technical information, financial

summaries, financial terms, and projected sales information. Paper 15. Exhibit 2029 is a confidential license agreement, which imposes a confidentiality requirement with a third party, DENSO, who has requested that Patent Owner maintain Exhibit 2029 as confidential pursuant to a protective order. Paper 15.

5 Exhibit 2004 references confidential information concerning licensing activities, including those relating to Exhibit 2029. *See* Paper 54. Exhibit 2082 is a confidential letter from DENSO to 3-D-V-U Israel (2000) Ltd. that relates to information for which 3-D-V-U Israel (2000) Ltd. and Bradium are under a confidentiality obligation pursuant to Exhibit 2029. *See* Paper 54.

10 Paper 49 refers to exhibits 2022 and 2029. *See* Paper 48. Paper 55 references exhibit 2029.

II. Discussion

A. The Confidential Documents Cited in the Final Written Decision should be Maintained as Confidential

15 Sealed confidential information subject to a protective order will ordinarily become public 45 days after final judgment in a trial unless a motion to expunge is filed. Rule 42.56; see also Comment 172, 77 FED. REG. 48612, 48644. Here, the date 45 days after final judgment was entered is September 9, 2017. Patent Owner has until 63 days from entry of judgment (September 26, 2017) to file a Notice of
20 Appeal.

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