

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GEOTAB INC., AND
TV MANAGEMENT, INC., D/B/A GPS NORTH AMERICA,
Petitioners,

v.

PERDIEMCO LLC,
Patent Owner.

Cases¹

IPR2016-01061 (Patent 8,223,012 B1)

IPR2016-01062 (Patent 8,493,207 B2)

IPR2016-01063 (Patent 8,717,166 B2)

IPR2016-01064 (Patent 9,003,499 B2)

Before WILLIAM V. SAINDON, CARL M. DeFRANCO, and
AMBER L. HAGY, *Administrative Patent Judges*.

HAGY, *Administrative Patent Judge*.

ORDER

Patent Owner's Motion to Seal
Petitioner's Motion to Seal and Motion for Protective Order
37 C.F.R. §§ 42.14, 42.54

¹ This Order applies to each of the listed cases. We exercise our discretion to issue one Order to be docketed in each case. The parties, however, are not authorized to use this caption for any subsequent papers.

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A. *Patent Owner's Motion to Seal*

On October 25, 2016, pursuant to 37 C.F.R. § 42.14, Patent Owner filed a Motion to Seal requesting sealing of Exhibit 2008. Paper 16, 1 (“Patent Owner’s Mot. to Seal”).² Although Patent Owner does not include an express certificate of conference in its request, Patent Owner represents that its request to seal is at the behest of Petitioner TV Management, Inc., d/b/a GPS North America (“GPSNA”), who purportedly requested that Patent Owner “file Exhibit 2008 under seal.” Patent Owner’s Mot. to Seal 1. Patent Owner represents that Exhibit 2008, in its entirety, is “confidential settlement negotiations between [Patent Owner] and GPSNA.” *Id.* We note that dollar amounts have been redacted from Exhibit 2008.

B. *Petitioners' Motion to Seal
and for Entry of Default Protective Order*

On November 1, pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioners GPSNA and Geotab Inc. (“Geotab”) (collectively, “Petitioners”) filed a Motion to Seal requesting sealing of Exhibits 1011, 1012, and 1013, and for entry of the Board’s default protective order. Paper 19, 1 (“Petitioners’ Mot. to Seal”).³ Petitioners’ Motion to Seal seeks to seal exhibits that Petitioners

² Identification of Exhibits and Papers herein, unless otherwise indicated, refer to those filed in IPR2016-01061. The corresponding Papers and Exhibits in each of the other proceedings are: Paper 15 (IPR2016-01062); Paper 16 (IPR2016-01063); and Paper 16 (IPR2016-01064).

³ The corresponding Papers and Exhibits in each of the other proceedings are: Paper 17 and Exhibits 1012, 1013, and 1014 (IPR2016-01062); Paper 18 and Exhibits 1014, 1015, and 1016 (IPR2016-01063); and Paper 18 and Exhibits 1012, 1013, and 1014 (IPR2016-01064).

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represent contain “confidential information such as account numbers and amounts of funds.” Petitioners’ Mot. to Seal 1–2.

Petitioners certify that they “attempted in good faith to confer with Patent Owner” regarding the filing of the Motion to Seal and the default protective order. Petitioners’ Mot. to Seal. 3. In particular, Petitioners represent that they “contacted Patent Owner via email on October 31, 2016 to discuss the confidentiality of the evidence and the Default Protective Order,” but “Patent Owner did not respond.” *Id.*; *see* 37 C.F.R. § 42.54 (a) (requiring certification of a meet-and-confer between the parties). Petitioners’ Motion to Seal was filed on November 1, 2016. Paper 19. Patent Owner has not filed an opposition to Petitioners’ motion.

C. Analysis

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because these proceedings determine the patentability of claims in issued patents and, therefore, affect the rights of the public. Under 35 U.S.C. § 326(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; a party, however, may file a concurrent motion to seal, and the information at issue is sealed pending the outcome of the motion. It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7); *see Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

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

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showing entitlement to the requested relief, and establishing that information sought to be sealed is confidential information. 37 C.F.R. § 42.20(c).

Patent Owner filed Exhibit 2008 in support of its Motion to Terminate.⁴ Patent Owner represents that Exhibit 2008 contains business confidential information in the form of “confidential settlement negotiations.” Patent Owner’s Mot. to Seal 1. As noted above, Patent Owner purportedly filed this motion at the behest of Petitioner GPSNA.

Petitioners filed Exhibits 1011, 1012, and 1013 in support of the Opposition to Patent Owner’s Motion to Terminate.⁵ Petitioners represent that Exhibit 1011⁶ is a declaration by William Steckel, which includes, in Exhibits A and C, “confirmations for the transfer of funds” that include “confidential financial information such as account numbers and amounts of funds.” Petitioners’ Mot. to Seal. 1. Petitioners similarly represent that Exhibit 1012⁷ is a declaration by Steven Hill, which includes, in Exhibit A, “wire transfer confirmations” and thus also contains “confidential financial information.” *Id.* at 1–2. Petitioners additionally represent that Exhibit

⁴ In IPR2016-01061, Paper 17. Similar papers exist in the other proceedings.

⁵ In IPR2016-01061, Paper 18. Similar papers exist in the other proceedings.

⁶ Exhibit 1012 in IPR2016-10162 and IPR2016-01063; Exhibit 1014 in IPR2016-01063.

⁷ Exhibit 1013 in IPR2016-10162 and IPR2016-01063; Exhibit 1015 in IPR2016-01063.

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1013⁸ is a declaration by Michael Femel that includes, as Exhibit A, a Joint Defense Agreement, which Petitioners represent “is privileged work product.” *Id.* at 2. Petitioners also represent that Exhibit B to the Femel Declaration contains “confirmations for transfers of funds,” which Petitioners represent is “confidential financial information.” *Id.* Petitioners have filed redacted versions of each of these exhibits publicly. *Id.* at 1.

We agree that Exhibit 2008 and Exhibits 1011, 1012, and 1013 appear, on their face, to contain confidential business information. Further, these exhibits are offered as evidence directed an issue unrelated to the patentability of the patents at issue, namely, a Motion to Terminate involving a question of real party-in-interest. We, therefore, are persuaded that Patent Owner shows good cause for sealing Exhibit 2008 in its entirety, and Petitioners show good cause for sealing Exhibits 1011, 1012, and 1013 in their entirety. Accordingly, we grant Patent Owner’s Motion to Seal and Petitioners’ Motion to Seal.

The parties are advised that, according to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012) (“Trial Practice Guide”):

Confidential information that is subject to a protective order ordinarily would become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial. There is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is

⁸ Exhibit 1014 in IPR2016-10162 and IPR2016-01063; Exhibit 1016 in IPR2016-01063.

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