

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORP., CAVIUM, INC., and DELL INC.,
Petitioners,

v.

ALACRITECH, INC.,
Patent Owner

Case IPR2018-00234¹
U.S. Patent No. 8,805,948

**PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO SEAL**

¹ Cavium LLC (formerly Cavium, Inc.), which filed a Petition in Case IPR2018-00403, and Dell Inc., which filed a Petition in Case IPR2018-01307, have been joined as petitioners in this proceeding.

Patent Owner Alacritech, Inc. (“Patent Owner” or “Alacritech”) hereby opposes Petitioner Intel Corporation’s (“Petitioner” or “Intel”) Motion to Seal (Paper 68, “Motion to Seal”). Instead of attempting to show “good cause” to seal portions of the Board’s June 4, 2019 Order (Paper 66, “Order”), Petitioner merely references undefined “commercial information” related to Intel and its customers and “Intel business practices”—none of which deserve protection either under the Protective Order entered in this IPR or by way of a motion to seal. Petitioner’s request to seal portions of the Order is a blatant attempt to hide its abuse and serial IPR filing practices from the public.

Because Petitioner has failed to demonstrate *any* of the four factors required to show good cause to seal under this Board’s precedent, Petitioner’s motion should be denied and the default rule of public availability should control.

I. LEGAL STANDARD

In an *inter partes* review, the moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). A party moving to seal must show “good cause” for the relief requested. 37 C.F.R. § 42.54(a). This principle and the detailed factors for showing good cause have been articulated in many decisions before the Board, including the informative decision *Argentum Pharm. LLC v. Alcon Research, Ltd.*, Case IPR2017-01053, Paper 27 (Jan. 19, 2018). *See also* *Garmin Int’l v. Cuozzo Speed Techs., LLC*, Case IPR2012-00001,

Paper 34 (Mar. 14, 2013) and *Corning Optical Communications RF, LLC, v. PPC Broadband, Inc.*, Case IPR2014-00440 Papers 46, 47, 49 (April 6, 14, and 17, 2015).

In *Argentum Pharm*, the Board explained that “[t]he ‘good cause’ standard for granting a motion to seal reflects the strong public policy for making all information in an *inter partes* review open to the public,” and unlike in a civil action in district court, “the default rule is that all papers . . . are open and available for access by the public.” *Argentum Pharm. LLC v. Alcon Research, Ltd.*, Case IPR2017-01053, Paper 27 at 3 (internal quotation and citations omitted).

“Good cause” for sealing is established by a “sufficient explanation as to why” the “information sought to be sealed is confidential information”, a demonstration that the information is not “excessively redacted”, and a showing that, on balance, the strong “public[] interest in maintaining a complete and understandable record” is outweighed by “the harm to a party, by disclosure of information” and “the need of either party to rely specifically on the information at issue.” Consequently, a movant to seal must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

Id. at 3-4 (internal citation omitted and emphasis added).

II. PETITIONER HAS FAILED TO SHOW GOOD CAUSE TO SEAL PORTIONS OF THE ORDER

a. Petitioner failed to sufficiently explain why the information sought to be sealed was confidential

A movant to seal must first show that “the information sought to be sealed is truly confidential.” *Id.* The confidentiality allegations made by Petitioner are conclusory in nature and are not supported by any specific evidence or even a sufficient explanation. Such allegations are terse, including three sentences total:

The redacted version of Paper 66 is redacted to protect highly sensitive, commercial information related to the relationship between Intel and its customers and other internal Intel business practices. For example, Paper 66 includes specific details about and quotes from commercially sensitive agreements with Intel’s customer Dell. As such, portions of Paper 66 are designated Petitioner’s Restricted – Attorneys’ Eyes Only under the Protective Order in this IPR.

Motion to Seal at 3. Here, Petitioner has only asserted confidentiality over one example, the agreements between Intel and Dell. However, this general assertion does not explain why such agreements are sensitive and confidential and does not explain why each proposed redaction is sensitive and confidential. Indeed, many confidential agreements routinely include confidentiality clause, prohibiting parties from disclosing the agreements or certain terms of the agreements without mutual

consent, but Petitioner here did not identify any such clauses or even allege that the terms of the agreements are confidential.

In fact, the two agreements have been summarized multiple times by Petitioner in both IPR proceedings and the District Court case. For example, in Intel's motion to intervene, which is already of public record in this IPR, Intel stated that "Intel has agreed to defend and partially indemnify Dell as to Alacritech's allegations based on Intel components incorporated into the accused Dell products." Ex. 2051 at 1. In Petitioner's Reply brief, it stated that "Intel also has no obligation to indemnify (and therefore no right to control) any Defendant on the 205 Patent because PO's allegations for the 205 Patent are not directed exclusively to components supplied by Intel (e.g. operating systems)." Paper 35 at 18-19. These statements are coextensive with corresponding language proposed to be sealed in the Order.² See, e.g., Motion to Seal, Exhibit A, Order at 13, 15, Dissenting at 29-32.

² The only basis for Petitioner's request to seal appears to be Petitioner's prior designation of the agreements as "Petitioner's Restricted – Attorneys' Eyes Only" under the Protective Order entered in this IPR. Motion to Seal at 3. Obviously, designation under the Protective Order does not give Petitioner *carte blanche* to

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