

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

ALACRITECH, INC.,
Patent Owner.

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

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

¹Cavium, 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's ("PO") Opposition is a waste of the Board's time and resources. The Board routinely grants motions to seal upon a showing of good cause such as the one Petitioner set forth here, particularly when the request is narrowly tailored to specific sensitive information. As PO has made no arguments sufficient to rebut Petitioner's good cause showing, the Motion should be granted.

Petitioner moved to seal certain limited portions of the Board's June 4, 2019 Order ("Paper 66"). As explained in the Motion, the information sought to be sealed relates to highly sensitive commercial information regarding the relationship between Petitioner Intel and its customers, specifically details from confidential agreements with its customer Dell. Petitioner, understanding the public interest in access while balancing the need to protect commercially sensitive information, thus proposed very limited redactions to Paper 66 in connection with its Motion.

While PO contends that Petitioner's Motion failed to satisfy the "good cause" standard, the Board routinely grants motions like the one at issue here. *See Google v. Seven Networks*, IPR2018-01047, Paper 34 (Mar. 29, 2019); *Unified Patents vs. American GNC*, IPR2019-00505, Paper 31 (granting motion to seal, even in denial of institution *inter partes* review, where "the information sought to be sealed reflects confidential business information of Petitioner.")). Indeed, to demonstrate good cause, Petitioner's Motion provided explanation regarding why the information sought to be sealed should be maintained as confidential (highly sensitive

commercial information including excerpts from customer agreements) and demonstrated it was not excessively redacted (redacting limited information regarding specific exhibits, never entire pages or the Board's conclusions). Petitioner averred in its Motion that the information sought to be sealed is confidential and not publicly known, and PO has not demonstrated otherwise. Petitioner also set forth that harm could result from public disclosure, including by noting the information sought to be sealed was commercially sensitive as it pertains to details of Petitioner's customer relationships. Given this, on balance, Petitioner demonstrated that maintaining the confidentiality outweighed the public's interest, and therefore established good cause. Nothing more is required.

Despite this, PO opposes the Motion. But aside from reciting the general standard favoring public disclosure of IPR proceedings, PO's opposition provides no explanation for why the particular information sought to be sealed is needed to advance that goal. Notably, PO did not previously oppose a motion to seal the underlying exhibits relied upon by the Board in the termination decision (*see* Paper 43), which are also under seal in the related District Court litigations.

PO makes the inflammatory assertion that, "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." Paper 70 at 2. This Board carefully considered and squarely rejected this baseless and scurrilous allegation in its Institution Decision, finding that "the typical hallmarks of abusive, strategic serial petitioning are absent

from this case.” Paper 7 at 14. PO’s repetition of this baseless allegation here is all the more remarkable because it bears no relation to the information sought to be redacted. Nothing about the requested redactions prevents the public from seeing the IPR petitions Petitioner filed, the manner in which they proceeded, and their outcome. The redactions merely protect details of commercially sensitive confidential agreements with an important customer.

In attempting to undermine Petitioner’s showing, PO alleges that, because Petitioner has discussed the general contours of its agreements with its customer Dell, this justifies publishing the entirety of these confidential business agreements. This contorted argument is unsupported by any authority. PO also argues against itself by, on the one hand, contending the sealed portions of the opinion are “coextensive” with statements in the public record, while on the other hand arguing that the precise details of these statements must be unsealed to fully understand the Board’s analysis. Instead, by PO’s own admission, the only details pertinent to the Board’s analysis, who the parties to the agreement are and whether there is indemnification, are already public. *See Google v. Seven Networks*, IPR2018-01047 Paper 34 (granting motion to seal and noting the “public’s interest in the confidential information is minimal because it relates to real party in interest and privy issues and otherwise is not relevant to the merits of the case.”) The Board did not rely on the *content* of Petitioner’s agreements with its customer Dell in reaching its ultimate

conclusion that Dell was a real party in interest. Rather, the fact that there was an indemnification provision in the otherwise confidential agreements was just one factor that indicated, according to the Board, a preexisting relationship such that Dell “benefitted directly” from Petitioner’s filing the Petitions. Paper 66 at 18. Petitioner has not denied the basic facts regarding the existence of an indemnification agreement, and does not seek to seal them now.

Further, PO’s opposition does not acknowledge that Petitioner did not affirmatively seek to publicize or produce the highly sensitive confidential agreements. Indeed, Petitioner only produced these agreements as a result of PO’s motion for additional discovery, which the Board granted in PO’s favor following Petitioner’s well founded objections. In opposing that motion, Petitioner explained that the underlying customer agreements were “highly confidential,” and expressed specific concern that default IPR protective order would “not provide sufficient confidentiality protection for the requested documents.” Paper 28 at 1,10. To address these concerns, Petitioner negotiated a further protective order specifically to protect these documents. Throughout this proceeding, Petitioner has sought to preserve the confidentiality of the underlying highly sensitive details of the agreements. Ultimately, PO’s opposition does not dispute that the underlying agreements are confidential and not publicly known.

PO also takes issue with Petitioner’s statement that the disclosure of the

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