

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 MOTION TO SEAL PAPER 71

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.

Petitioner Intel Corporation (“Petitioner”) hereby moves to seal certain portions of the Board’s August 28, 2019 Order (“Paper 71”) that reference highly confidential information of the Petitioner. Good cause exists for granting this motion, as set forth below, including because Paper 71 references confidential, highly sensitive commercial information. Attached to this Motion as Exhibit A is a redacted version of Paper 71 for filing onto the Public Record.

I. MOTION TO SEAL

The record of an *inter partes* review proceeding, including documents and things, is made available to the public, except as otherwise ordered. 37 C.F.R. § 2.14. But despite the default rule of public availability, the Board will seal confidential information for “good cause,” because it is necessary 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.” 37 C.F.R. § 42.54(a); 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). As set forth in the Office Trial Practice Guide, the Board treats confidential information “consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.* at 48760.

In accordance with rules and procedures, Petitioner moves to seal portions of Paper 71.

The redacted version of Paper 71 is redacted to protect confidential highly sensitive, commercial information related to the relationship between Intel and its customers and other internal Intel business practices. For example, Paper 71 includes specific details about and quotes from commercially sensitive agreements with Intel's customer Dell. As such, portions of Paper 71 are designated Petitioner's Restricted – Attorneys' Eyes Only under the Protective Order in this IPR. This Protective Order was specifically negotiated to cover documents and information such as at issue here, following Patent Owner's motion for additional discovery. The details of the agreements have been treated as confidential and highly sensitive throughout the proceeding. Petitioner submits narrowly tailored redactions to balance the public interest and the need to protect highly sensitive business information of Petitioner. PO did not previously oppose a motion to seal the underlying exhibits relied upon by the Board in the rehearing decision (*see* Paper 36), which are also under seal in the related District Court litigations.

Paper 71 contains certain confidential business information as indicated above, the public disclosure of which could cause Petitioner irreparable harm, as further explained in Exhibit 1506 (Declaration of P. Schmisser). Similarly, Cavium was joined in the IPR, and Petitioner has taken great pains to prevent disclosure of its confidential customer information to its competitor, which would immediately result should the information no longer be sealed.

The information that Petitioner requests to be sealed was submitted only to rebut Patent Owner's arguments regarding real party in interest, and was only produced in this proceeding as a result of PO's motion for additional discovery. The information is otherwise unimportant to the merits of this proceeding, and therefore the public's interest in having access to this information is minimal. *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 privacy issues and otherwise is not relevant to the merits of the case."). Nothing about the redactions will prevent the public from understanding the Board's decision. The PTAB routinely seals institution decisions that contain sensitive business information that is only relevant to procedural issues such as RPI and privacy. *See, e.g., Google v. Seven Networks*, IPR2018-01047, Ex. 1056 (Redacted decision instituting IPR); *ARRIS International PLC v. ChanBond, LLC*, IPR2018-00570, Paper No. 25 (PTAB July 20, 2018) (Redacted decision denying institution); *Ventex Co., Ltd., v. Columbia Sportswear North America, Inc.*, IPR2017-00651 (PTAB Jan. 24, 2019) (Redacted decision vacating institution).

II. CERTIFICATION OF NON-PUBLICATION

On behalf of Petitioner, the undersigned counsel certifies that the information sought to be sealed by this Motion has not, to their knowledge, been published or otherwise made public.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board grant the motion to seal certain portions of the Board's August 28, 2019 Order that reference highly confidential information of the Petitioner.

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