

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC, ZTE (USA), INC., SAMSUNG ELECTRONICS CO., LTD.,
LG ELECTRONICS INC., HUAWEI DEVICE USA, INC.,
HUAWEI DEVICE CO. LTD., HUAWEI TECHNOLOGIES CO. LTD.,
HUAWEI DEVICE (DONGGUAN) CO. LTD.,
HUAWEI INVESTMENT & HOLDING CO. LTD.,
HUAWEI TECH. INVESTMENT CO. LTD., and
HUAWEI DEVICE (HONG KONG) CO. LTD.,

Petitioner

v.

Cywee Group Ltd.

(record) Patent Owner

IPR2018-01257

Patent No. 8,552,978

PETITIONER GOOGLE'S MOTION TO SEAL

Petitioner Google LLC (“Google”) requests that footnote 1 of its Opposition to Patent Owner’s Motion to Terminate (“Opposition”) be sealed under 37 C.F.R. § 42.55. Good cause to seal exists because the redaction is very limited and seeks to protect certain sensitive, non-public information that a business would not make public.

I. GOVERNING RULES AND PTAB GUIDANCE

Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public, but a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion.

Similarly, 37 C.F.R. § 42.14 provides:

The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7) (“The Director shall prescribe regulations ... providing for protective orders governing the exchange and submission of

confidential information”). In that regard, the *Office Trial Practice Guide*, 77 *Fed. Reg.* 48756, 48760 (Aug. 14, 2012) provides:

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.

* * *

Confidential Information: The rules identify confidential information in a manner 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. § 42.54.

Under 37 C.F.R. § 42.55, a “petitioner filing confidential information with a petition may, concurrent with the filing of the petition, file a motion to seal with a proposed protective order as to the confidential information.”

II. IDENTIFICATION OF CONFIDENTIAL INFORMATION

The confidential information that Google moves to seal consists of internal corporate policies and business practices. Specifically, footnote 1 of the Opposition contains sensitive internal business information pertaining to the existence or non-existence of certain legal arrangements and/or business relationships. Petitioner certifies that the full extent of this information has not

been published or otherwise been made public.

III. GOOD CAUSE EXISTS FOR SEALING THE CONFIDENTIAL INFORMATION

The Board routinely seals confidential, internal and sensitive business information. *See, e.g., Tandus Flooring, Inc. v. Interface, Inc.*, IPR2013-00333, Paper 60 (P.T.A.B. Aug. 8, 2014). Here, the information contained in footnote 1 of the Opposition consists of confidential, internal, and sensitive business information. Good cause exists to seal and keep this information confidential because the extent of the redaction is very limited and because the information would be valuable to competitors and harmful to Google if made public. Accordingly, as in *Tandus*, the Board should seal and keep this information confidential.

IV. PROPOSED PROTECTIVE ORDER

Counsel for Google have made good faith attempts to agree to a Protective Order with counsel for CyWee. Although both parties have conferred and are in general agreement regarding the need to modify the Default Protective Order by establishing an Outside-Counsel-Only category of protection (which would govern both CyWee's Exhibit 2031, as well as footnote 1 of Google's Opposition), the parties remain in negotiations over the precise scope of the modifications. Google will promptly confer with CyWee and submit a proposed

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Protective Order for this matter. Until that time, Google requests that footnote 1 of the Opposition remain sealed.

Dated: August 9, 2019

/Andrew S. Baluch/
Andrew S. Baluch (Reg. No. 57,503)

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