

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 the entire content of the exhibits 2049-2056, as well as redacted portions of Patent Owner CyWee’s Supplemental Submission of Information in Light of the Additional Discovery, filed November 7, 2019, be sealed under 37 C.F.R. § 42.55. Good cause to seal exists because the redaction 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.

II. IDENTIFICATION OF CONFIDENTIAL INFORMATION

The confidential information that Google moves to seal consists of non-public commercial agreements with a third party obtained from that party, pursuant to an order for additional discovery and under a protective order, in IPR2019-00143. Specifically, the agreements in Exhibits 2049-2056 are confidential commercial agreements between parties, and the redacted portions of the CyWee submission refer to, interpret, or quote content from the agreements. Further redactions in CyWee’s submission of citations to Exhibit 2014 are necessary to prevent cross-referencing. Finally, sealing of Ex. 2056 and

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redactions to the last paragraph are intended to preserve confidential material relating to agreements between defendants in litigation. 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 redacted information 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 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. PROTECTIVE ORDER

The parties submitted a joint motion for a modified protective order, together with a draft order on August 13, 2019 in this proceeding.

Dated: November 7, 2019

/Matthew A. Smith/
Matthew A. Smith (Reg. No. 49,003)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion to Seal was served by electronic mail on November 7, 2019, on all counsel of record at the USPTO having the following addresses:

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