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Paper No. 8
Entered: October 7, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

FIRSTFACE CO., LTD.,
Patent Owner.

Cases
IPR2019-01011(Patent 9,633,373 B2)
IPR2019-01012 (Patent 9,779,419 B2)

Before JUSTIN T. ARBES, MELISSA A. HAAPALA, and RUSSELL E. CASS, *Administrative Patent Judges*.

CASS, *Administrative Patent Judge*.

DECISION
Granting Petitioner's Motion to Seal
37 C.F.R. § 42.54

Petitioner filed a Motion to Seal certain materials filed with the Petition in each of the instant proceedings.[1] The Motions are substantially similar, and we refer to the papers and exhibits filed in Case IPR2019-01011 for convenience. Petitioner moves to seal portions of the following materials, providing public, redacted versions for the documents:

Document	Exhibit
Declaration of Michael Hulse	1004
Declaration of Yosh Moriarty	1031

See Mot. 1. Petitioner filed the unredacted versions of the documents in the Patent Trial and Appeal Board End to End (PTAB E2E) system as "Board Only." Petitioner states in the Motion that it conferred with Patent Owner, and Patent Owner indicated that it does not oppose this Motion and agrees to the protective order proposed by Petitioner. Mot. 5. Patent Owner did not file an opposition to the Motion or otherwise object to the designation of the unredacted versions as "Board Only."

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; a party, however, may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. It is, however, only "confidential information" that

[1] *See* IPR2019-01011, Paper 6 ("Mot."); IPR2019-01012, Paper 6.

is protected from disclosure. 35 U.S.C. § 316(a)(7). In that regard, the Office Patent Trial Practice Guide 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.

77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012).

The standard for granting a motion to seal is "for good cause." 37 C.F.R. § 42.54(a).[2] The filing party bears the burden of proof in showing entitlement to the relief requested in a motion to seal. 37 C.F.R. § 42.20(c).

Petitioner argues that the Declarations[3] include "confidential and commercially sensitive business information" regarding "(1) Apple's internal systems for managing and tracking documents and information, including an identification of those systems and/or their histories of use within Apple, (2) Apple's internal document naming conventions, (3) Apple's internal workflow for publishing documents, and (4) internal

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[2] Petitioner filed Exhibits 1004 and 1031 with the Petition, but did not file its Motion concurrently with the Petition in accordance with 37 C.F.R. § 42.55. Under the circumstances, and because the Motion is unopposed, we waive the requirements of 37 C.F.R. § 42.55 and evaluate the Motion on the merits. *See* 37 C.F.R. § 42.5(b). The parties, however, are reminded to follow the Board's rules during the instant proceedings.

[3] The Declarations include separate documents as "Attachments." The parties are reminded to file individual documents as separately numbered exhibits. *See* 37 C.F.R. § 42.63.

metadata and/or properties assigned to Apple documents." Mot. 2. Petitioner argues that this information "originated from Apple's internal systems (as shown and described in the Declarations), is not publicly available, and has been and continues to be intended to remain confidential." *Id.*

Petitioner argues that it faces concrete harm if its confidential information is released to the public because the information provides details about how it operates, providing specific insight into its operations with respect to internal systems, documentation, and information. *Id.* Petitioner argues that if this information were subject to public access, Petitioner's processes would be subject to copying by competitors. *Id.* Petitioner further argues that the public identification of its internal systems would create security risks because, for example, would-be attackers could gain insight into the structure of its internal file systems, databases, and servers, thereby putting at risk additional confidential information, including Petitioner's technical, financial, and customer information. *Id.* at 2–3. Petitioner also argues that there exists a genuine need to rely on the Declarations in these proceedings because they allegedly support the date of public availability of Exhibits 1007 and 1032, which are used in the asserted grounds of unpatentability. *Id.* at 3.

Petitioner asserts that the Declarations have not been excessively redacted, and the non-redacted portions of the Declarations include detailed information about the identity and employment of the declarant, non-confidential details about the contents and history of Exhibits 1007 and 1032, and identification of the dates of public availability of Exhibits 1007 and 1032. *Id.* Petitioner argues that, on balance, the harm to it in making

the redacted information available outweighs any interest in releasing it to the public. *Id.*

Upon reviewing the materials sought to be sealed, and Petitioner's arguments regarding their confidential nature, we are persuaded that good cause exists to seal them. We also note that the redacted portions of the materials appear to be tailored narrowly to only confidential information.

Petitioner provides a proposed protective order agreed to by the parties attached as Appendix A to the Motions to Seal, along with a comparison showing changes made to the Board's default protective order as Appendix B. Mot. 4–5. Petitioner contends that the changes are necessary to minimize security risks and protect Petitioner's confidential information from competitors. *Id.* Specifically, Petitioner creates an additional designation "PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS' EYES ONLY" for confidential material and restricts the material to Outside Counsel, Experts, Office Staff, and Support Personnel. *Id.* at 4. Petitioner also modifies the default protective order to provide that Support Personnel shall also include support personnel of outside counsel of record for a party in the proceeding. *Id.*

The July 2019 Update to the Office Patent Trial Practice Guide sets forth the following guidance for situations where the parties propose modifications to the Default Protective Order:

> Modifications to the Default Protective Order: The parties may propose modifications to the Default Protective Order. The Board will consider changes agreed to by the parties, and generally with accept such proposed changes if they are consistent with the integrity and efficient administration of the proceedings. For example, the parties may agree to modify the Default Protective Order to provide additional tiers or categories of confidential information, such as "Attorneys' Eyes

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