

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

v.

REMBRANDT WIRELESS TECHNOLOGIES, LP,

Patent Owner.

Case IPR2020-00033

U.S. Patent No. 8,023,580

**PETITIONER'S UNOPPOSED MOTION TO EXPUNGE
CONFIDENTIAL INFORMATION UNDER SEAL**

Pursuant to 37 C.F.R. § 42.56, and authorization received via email from the Patent Trial and Appeal Board (the “Board”) on March 27, 2020, Petitioner Apple Inc. (“Petitioner”) hereby moves for an order expunging protected documents filed under seal in this proceeding, namely the under seal version of the Petition (Paper 3) and Exhibit 1033. These documents disclose and discuss information that is confidential to Apple and a third party. Accordingly, Petitioner hereby moves to expunge the confidential information currently under seal.

If the Board is not inclined to grant this Motion, the parties respectfully request a conference call with the Board to discuss the issues raised in this Motion before any information becomes irreversibly public.

I. BACKGROUND

Petitioner filed a motion to seal (Paper 4) Exhibit 1033 and the limited portion of its Petition discussing the contents of Exhibit 1033 (Paper 3) because these materials contain highly confidential information belonging to a third party and Apple. In proceedings on a related patent, the Board granted Petitioner’s motion to seal identical material (IPR2020-00036, Paper 10), finding good cause exists for sealing the confidential information.

II. CONFIDENTIAL DOCUMENTS SHOULD BE EXPUNGED.

Petitioner requests that Exhibit 1033 and the under seal version of the Petition (Paper 3) be expunged from the record.

“A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.” Trial Practice Guide, 77 Fed. Reg. at 48,761. The moving party has the burden to establish that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). “Confidential information” is protected from disclosure by statute. 35 U.S.C. § 316(a)(7). “Confidential information” is defined as “trade secret or other confidential research, development, or commercial information.” 37 C.F.R. § 42.2.

The standard for granting a motion to seal confidential information is “for good cause.” 37 C.F.R. § 42.54. For example, where the details of the confidential business or commercial information are unimportant to the merits of the case and the public’s interest in having access to such information is minimal, such information may be sealed for good cause. *See* 37 C.F.R. § 42.54(a)(7); Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760. Where the Final Decision does not rely (or only minimally relies) on the confidential information, the Board has granted motions to expunge, finding that there is limited public interest in the confidential information and the record is minimally affected. *See e.g., Unverferth Mfg. Co. v. J&M Mfg. Co.*, IPR2015-00758, Paper 29 at 2 (P.T.A.B. Sept. 30, 2015) (granting the motion because the final decision did not rely upon the exhibit 5 at issue and “the file and decision remain understandable in the absence of” the exhibit). Confidential information will ordinarily become public after the final judgment in an IPR unless

a Board grants a motion to expunge. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012).

In the current proceeding, there has been no decision on institution, thus, the confidential information has not been discussed in a Board decision. In addition, Patent Owner has not referenced Exhibit 1033 or the limited portion of its Petition discussing the contents of Exhibit 1033 in any of Patent Owner's submissions. Accordingly, the public's interest in having access to such information is very minimal, and such information should be expunged for good cause.

Petitioner respectfully submits that good cause exists here and thus requests that the Board expunge the under seal version of the Petition (Paper 3) and Exhibit 1033 due to the confidential nature of the information in those documents. Petitioner has conferred with Patent Owner and Patent Owner does not oppose the request to expunge Petitioner's confidential submissions.

III. CONCLUSION

For the reasons set forth above in detail, Petitioner respectfully requests that its Motion to Expunge Confidential Information Under Seal be granted.

Dated: March 27, 2020 By: /Mark D. Rowland/
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