

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICROSOFT CORPORATION and HP INC.,

Petitioners

v.

SYNKLOUD TECHNOLOGIES, LLC,

Patent Owner

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Case IPR2020-01235

U.S. Patent 10,015,254

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**PATENT OWNER'S MOTION TO SEAL**  
**37 C.F.R. §§42.54, 42.55**

Patent Owner Syncloud Technologies, LLC (“PO” herein) moves to submit confidential information as evidence in support of its position in the above-captioned matter, and accordingly moves that Exhibits 2029, 2030, and 2039 submitted contemporaneously herewith, be accepted but not made public and maintained confidential to a Modified Protective Order submitted herewith as Exhibit 2036. In so moving, PO is guided by this Board’s Decision in IPR2017-01053, Paper No. 27, and decisions cited therein, including IPR2012-00001, Paper No. 34.

PO, as an element of its position that the claims challenged in the above-captioned IPR are not obvious over prior art cited, wishes to submit two licenses extended under the patent at issue, U.S. Patent No. 10,015,254 (“the ‘254 patent”) along with an associated claim chart as secondary indicia of non-obviousness pursuant to well-established caselaw. *See, e.g., Rothman v. Target Corp.* 556 F. 3d 1310, 1321 (Fed. Cir. 2009). The public is not denied essential information by sealing Exhibits 2029, 2030, and 2039. The Exhibits are two licenses between the owner of the ‘254 Patent and two recognized corporations, in consideration of payment of fees, along with an associated claim chart. No other issues, such as sales, conditions, promotions or other issues are set forth in or raised by the licenses, and thus, questions such as nexus and the like are not raised. PO does not rely on the identity of the Licensees, other than to note they are recognized major corporations in the computer technology field. PO does not

are in consideration of payment of money, and no other consideration flows between the parties.

By its terms, further information with respect to the licenses and associated claim chart is confined to outside counsel only. To that end, PO has fashioned a Protective Order premised on the Board's default protective order in the practice guide, but altered to limit the confidential information submitted to the specific counsel appearing for Petitioners in this matter. Submission of this information, which Court's have often found of value in considering questions of obviousness, without seal or protection, would potentially vitiate the licenses as a possible breach thereof and/or expose PO to liability.

Undersigned counsel has conferred with opposing counsel. Opposing counsel agreed to the Modified Protective Order that is Exhibit 2036.

Accordingly, PO respectfully requests Exhibits 2029, 2030, and 2039 be held confidential to the Board provisionally, pending grant of this Motion or expungement if this Motion is denied.

Respectfully, PO submits it has met the Board's standard for submission under seal, *Argentum Pharmaceuticals LLC v. Alcon Research*, IPR 2017-01053, Paper 27 (January 19, 2018) at p. 4. 1) The confidential information, two patent licenses, is truly confidential – it is confidential by its terms. 2) Concrete harm would result upon public disclosure of Exhibits 2029 or 2039, it would constitute a potential breach of the very license at issue. 3) There exists a

It is PO's strong evidence of a judicially recognized indication of non-obviousness – a patent license. 4) On balance, the interest in maintaining confidentiality as to this one exhibit outweighs the strong public interest in having an open record.

On this basis, and in light of the proposed Modified Protective Order that is Exhibit 2036, PO respectfully requests grant of this Motion and acceptance of Exhibits 2029, 2030, and 2039 under seal.

Respectfully submitted,

/Gregory J. Gonsalves/

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## CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e) and by the agreement of counsel for Petitioner, I certify that on April 19, 2021, I served a complete electronic copy of the Motion on the Petitioner's lead and backup counsel at the following email addresses:

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