

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AT&T SERVICES, INC. and DIRECTV, LLC,¹
Petitioners

v.

BROADBAND iTV, INC.,
Patent Owner

Case IPR2020-01267
U.S. Patent No. 10,028,026 B2

**MOTION UNDER 37 C.F.R. § 42.56 TO EXPUNGE CONFIDENTIAL
INFORMATION**

Mail Stop “PATENT BOARD”
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

¹ AT&T Services, Inc. and DIRECTV, LLC filed a motion for joinder and a petition in Case IPR2021-00556, which were granted, and were joined as petitioners in this proceeding.

I. STATEMENT OF RELIEF REQUESTED

Patent Owner Broadband iTV, Inc. (“BBiTV” or “Patent Owner”) respectfully moves to expunge all sealed documents in this proceeding, including: Patent Owner’s Response (Paper 35), Petitioner’s Reply (Paper 45), Patent Owner’s Sur-Reply (Paper 48), Petitioner’s Demonstratives (Paper 65), the transcript of the confidential portion of the oral hearing in this proceeding (Paper 70), and Exhibits 1053-1055, 1068, 2036, 2050-2054, 2063, 2070, 2093, 2123-2127, 2129, 2132-2135, 2137, 2142, 2150, 2151, 2154, 2157, 2158, 2164, 2165, 2178, and 2190. *See* Papers 57, 63.²

II. PROCEDURAL BACKGROUND

The Board has already granted motions to seal the confidential information in the above-listed papers and exhibits filed by the Parties. *See* Papers 57, 63 (the Board’s decisions granting or granting-in-part the Parties’ motions to seal). Public, redacted versions of all confidential sealed papers, declarations, deposition transcripts, and demonstratives were filed. The Board further filed the transcript of the oral hearing (Paper 70) under seal, and Patent Owner filed a public, redacted

² The Board already granted Patent Owner’s requests to treat settlement agreements (EX2200 and EX2300) as business confidential information, kept separate from the file of the ’026 patent. Paper 72, 3; Paper 75, 3.

version of the transcript (Paper 76).

III. ARGUMENTS

37 C.F.R. § 42.56 provides: “After denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.” *See also* Consolidated Trial Practice Guide (“TPG”), 21-22 (“A party seeking to maintain the confidentiality of information [] may file a motion to expunge the information from the record prior to the information becoming public.”). The Board has previously explained that a party moving to expunge must show that i) “any information sought to be expunged constitutes confidential information” and ii) the movant’s interest in expunging the information “outweighs the public’s interest in maintaining a complete and understandable file history.” *RPX Corp. v. Virnetx Inc.*, IPR2014-00171, Paper 62 at 3 (P.T.A.B. Sept. 9, 2014). The rules identify confidential information as including “a trade secret or other confidential research, development, or commercial information.” 37 C.F.R. §§ 42.54(a)(7) and 42.2. And the Board must 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.” TPG, 19; 37 C.F.R. § 42.54(a).

In this case, Patent Owner already demonstrated, and the Board agreed, that the sealed documents contain highly confidential, competitively sensitive business

information, including technical information related to products under development. *See* Papers 37, 50, 53, 57, 58, 63. Therefore, public disclosure of the sealed documents would cause significant competitive harm to Patent Owner.

There has been no change in the sensitivity or confidentiality of the information contained in the sealed documents since they were filed. Thus, Patent Owner has met its burden to show that “any information sought to be expunged constitutes confidential information.” *RPX Corp.*, IPR2014-00171, Paper 62 at 3.

The interest in expunging the sealed documents “outweighs the public’s interest in maintaining a complete and understandable file history.” *Id.* Moreover, the record contains public, redacted versions of all sealed papers, declarations, deposition transcripts, and demonstrative exhibits. Paper 59 (public, redacted version of Paper 35, the Patent Owner’s Response); Paper 60 (public, redacted version of Paper 48, the Patent Owner’s Sur-Reply); Paper 61 (public, redacted version of Paper 45, the Petitioner’s Reply); Paper 66 (public, redacted version of Paper 65, the Petitioner’s Hearing Demonstratives); EX1053 (public, redacted version of Confidential EX1053); EX1054 (public, redacted version of Confidential EX1054); EX1055 (public, redacted version of Confidential EX1055); EX1068 (public, redacted version of Confidential EX1068); EX2036 (public, redacted version of Confidential EX2036); EX2190 (public, redacted version of Confidential EX2190).

Additionally, no final written decision was issued in this case, and all sealed, confidential documents were submitted after trial was instituted. The confidential documents submitted during the trial thus have no effect on the determinations made in the institution decision, nor do they provide any understanding of the final result. Therefore, there is no public interest in seeing these confidential documents.

Accordingly, the public's access to the redacted versions of the sealed documents fulfills the public's interest in maintaining a complete and understandable record. Expungement of the sealed documents from the record will not diminish the public's understanding of the record or final result.

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