

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AT&T SERVICES, INC. and DIRECTV, LLC,
Petitioner,

v.

BROADBAND iTV, INC.,
Patent Owner.

IPR2020-01267
Patent 10,028,026 B2

Before JEFFREY S. SMITH, JUSTIN T. ARBES, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Motion to Expunge Confidential Information
37 C.F.R. § 42.56

This *inter partes* review was terminated on December 15, 2021. Paper 75. Patent Owner moves to expunge all documents filed under seal in this proceeding, except for Exhibits 2200 and 2300, which are settlement agreements that will be kept separate under the provisions of 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c). Paper 77 (“Mot.”); *see also* Papers 72 and 75 (ordering, respectively, that Exhibits 2200 and 2300 be kept separate under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c)). In particular, Patent Owner seeks expungement of the following: Papers 35, 45, 48, 65, 70; 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. Mot. 1.¹

The Board’s Rules provide that, “[a]fter 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.” 37 C.F.R. § 42.56. A judgment includes “termination of a proceeding.” 37 C.F.R. § 42.2. The Board’s Consolidated Trial Practice Guide² (“CPTG”) provides the following:

Confidential information that is subject to a protective order ordinarily would become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial. There is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial. 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

¹ Exhibits 1053–1055, 1068, 2036, and 2190 have two entries, one public and one confidential. We understand Patent Owner’s motion to request expungement of the confidential entries at these exhibit numbers.

² Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

becoming public. 37 C.F.R. § 42.56. The rule balances the needs of the parties to submit confidential information with the public interest in maintaining a complete and understandable file history for public notice purposes. The rule encourages parties to redact sensitive information, where possible, rather than seeking to seal entire documents.

CPTG at 21–22.

In its motion, Patent Owner adequately addresses the issues raised in the CPTG. Mot. 1–4. In particular, Patent Owner notes that “no final written decision was issued in this case, and all sealed, confidential documents were submitted after trial was instituted.” Mot. 4. Patent Owner argues, therefore, that these confidential documents had “no effect on the determinations made in the institution decision, nor do they provide any understanding of the final result.” Mot. 4. Patent Owner also notes that “the record contains public, redacted versions of all sealed papers, declarations, deposition transcripts, and demonstrative exhibits.” Mot. 3 (citing Papers 59–61, 66; Exs. 1053–1055, 1068, 2036, 2190).³ Under these circumstances, we grant Patent Owner’s motion.

In consideration of the foregoing, it is hereby:

ORDERED that Papers 35, 45, 48, 65, and 70 and Exhibits 2050–2054, 2063, 2070, 2093, 2123–2127, 2129, 2132–2135, 2137, 2142, 2150, 2151, 2154, 2157, 2158, 2164, 2165, and 2178 be expunged; and

³ Because we are expunging the confidential versions of the parties’ demonstratives, we dismiss as moot Patent Owner’s motion to seal the demonstratives (Paper 67).

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FURTHER ORDERED that the confidential entries at Exhibits 1053–1055, 1068, 2036, and 2190 be expunged.

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