

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DISH NETWORK, L.L.C.  
Petitioner

v.

BROADBAND ITV, INC.  
Patent Owner

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

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**PATENT OWNER BROADBAND iTV, INC.’S MOTION UNDER 37 C.F.R.  
§§ 42.14 AND 42.54 TO SEAL PATENT OWNER’S RESPONSE AND  
EXHIBITS 2035-2038, 2047, 2050-2061, 2063-2068, 2070, 2073-2102, 2104-  
2109, 2117-2127, 2129-2151, 2154-2166, 2177-2179, AND 2181-2185 AND  
ENTER PROTECTIVE ORDER**

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

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## I. INTRODUCTION

Patent Owner Broadband iTV, Inc. (“Patent Owner”), requests that the confidential version of the Patent Owner’s Response (“POR,” Paper 35) and the confidential versions of accompanying Exhibits 2035-2038, 2047, 2050-2061, 2063-2068, 2070, 2073-2102, 2104-2109, 2117-2127, 2129-2151, 2154-2166, 2177-2179, and 2181-2185 (collectively the “Confidential Documents”) be sealed under 37 C.F.R. §§ 42.14 and 42.54. Good cause to seal the Confidential Documents exists because information in the Confidential Documents is sensitive, non-public information that a business would not make public. Patent Owner therefore submits this Motion to Seal and requests entry of a protective order in the form appended hereto as Appendix A.

Pursuant to 37 C.F.R. § 42.54(a), Patent Owner’s counsel conferred in good faith with Petitioner’s counsel in an attempt to resolve any dispute about this Motion. Counsel for Petitioner indicated:

We are not generally opposed to filings under seal and use of the default protective order in appropriate circumstances. But, given that we do not know what type of information you contend is confidential, we are not in a position to determine whether or not we oppose at this time.

EX2186.

## II. GOVERNING RULES AND PTAB GUIDANCE

In determining whether to grant a Motion to Seal, the Board must find “good cause,” 37 C.F.R. § 42.54(a), and “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,” Consolidated Trial Practice Guide, November 2019 (“TPG”), 19. The Board identifies confidential information in a manner “consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for ... confidential research, development, or commercial information.” TPG, 19.

Based on the procedure provided in the TPG, Patent Owner seeks to prevent the disclosure of sensitive business and confidential technical information contained in the aforementioned Confidential Documents.

In previous *inter partes* review (IPR) proceedings, the Board has provided different remedies to maintain the confidentiality of sensitive information. For example, the Board in *Samsung Electronics Co., Ltd. v. NVIDIA Corp.* granted a patent owner’s Motion to Seal documents that contain highly confidential technical information, including source code and design documents, relating to the patent owner’s core business. IPR2015-01070, Paper 33 at 3 (P.T.A.B. Mar. 24, 2016). There, the patent owner argued, “[p]ublic disclosure of this information would significantly harm NVIDIA’s competitive position because it would allow

competitors to access sensitive technical information.” *Id.*, Paper 6 at 1 (P.T.A.B. July 27, 2015). Similarly in this proceeding, public disclosure of Patent Owner’s emails and technical documents would significantly disadvantage Patent Owner’s competitive position because competitors would have access to sensitive technical information about Patent Owner’s commercial products.

Furthermore, the Board in *Riverbed Technology, Inc. v. Silver Peak Systems, Inc.*, granted a motion to seal during the duration of the IPR proceedings. IPR2014-00245, Paper 36 at 4-5 (P.T.A.B. Nov. 19, 2014). There, the patent owner sought to file source code under seal to antedate a reference cited by the petitioner. The patent owner indicated that if the source code were to become public, it would create a risk of “copying and other competitive harms.” *Id.*, Paper 27 at 3. Accordingly, the Board conditionally granted the motion to seal for the duration of the proceeding, stating:

Considering the stated importance and sensitivity of Exhibit 2015 to Patent Owner, rather than denying the Motion to Seal, which would make Exhibit 2015 immediately publicly accessible, the Board conditionally grants the motion for the duration of this proceeding. If the Board’s final decision substantively relies on any information in Exhibit 2015, then Exhibit 2015 will be unsealed (in whole or in part) by an Order of the Board. However, if the Board does not rely on any information in Exhibit 2015, then Exhibit 2015 will be expunged from the record by an Order of the Board.

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