

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISH NETWORK L.L.C., AT&T SERVICES, INC.,
And DIRECTV, LLC,¹
Petitioner

v.

BROADBAND ITV, INC.,
Patent Owner

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

**PATENT OWNER'S MOTION UNDER 37 C.F.R. §§ 42.14 AND 42.54 TO
SEAL PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY**

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, therefore, have been joined as petitioners in this proceeding.

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I. INTRODUCTION

Patent Owner Broadband iTV, Inc. (“Patent Owner”), requests that the confidential version of Patent Owner’s Sur-Reply to Petitioner’s Reply (“Sur-Reply”) be sealed under 37 C.F.R. §§ 42.14 and 42.54. Good cause to seal the Sur-Reply exists because certain information in the Sur-Reply is sensitive, non-public information that a business would not make public. This information relates to the same exhibits that Patent Owner previously sought to seal. *See* Paper 37. Patent Owner therefore submits this Motion to Seal the confidential version of the Sur-Reply under the Board’s Default Protective Order, previously requested to be entered in this case. *Id.*

Pursuant to 37 C.F.R. § 42.54(a), Patent Owner’s counsel previously conferred in good faith with Petitioner’s counsel in an attempt to resolve any dispute about the information requested to be sealed with 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, Petitioner seeks to prevent the disclosure of sensitive information that is contained in the Sur-Reply.

III. IDENTIFICATION OF CONFIDENTIAL INFORMATION AND CERTIFICATION THAT THE CONFIDENTIAL INFORMATION SOUGHT TO BE PROTECTED HAS NOT BEEN MADE PUBLICLY AVAILABLE

Patent Owner states that certain information in the Sur-Reply is confidential and thus has not been published or otherwise made public. This information relates to exhibits previously filed under seal, including Exhibits 2061 and 2070. Patent Owner certifies that, to the best of its knowledge, the information sought to be sealed has not been published or otherwise made public.

IV. GOOD CAUSE EXISTS FOR SEALING THE CONFIDENTIAL INFORMATION.

The Board routinely seals technical documents and papers referencing information found therein. *See, e.g., Samsung Electronics Co., Ltd. v. NVIDIA Corp.*, IPR2015-01070, Paper 33 (P.T.A.B. Mar. 24, 2016); *Riverbed Technology, Inc. v. Silver Peak Systems, Inc.*, IPR2014-00245, Paper 26 (P.T.A.B. Nov. 19, 2014); *Caterpillar Inc. v. Wirtgen America Inc.*, IPR2017-02185, Paper 42 (May 3, 2019). Here, while some portions of the Sur-Reply are not confidential, portions of the Sur-Reply reference information found in confidential technical documents describing, for example, products under development. Good cause exists to seal and keep this information confidential because it includes details which would be valuable to Patent Owner's competitors and harmful to Patent Owner and possibly third parties if made public. Accordingly, Board should seal and keep this information confidential.

The public interest also will not be harmed by granting this Motion to Seal the confidential version of the Sur-Reply as "**PROTECTIVE ORDER MATERIAL**," because a redacted version of the Sur-Reply is filed publicly herewith. In short, granting this Motion to Seal would achieve "a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." 77 Fed. Reg. at 48,760. Therefore, good cause exists for granting this motion to seal.

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