

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., AT&T SERVICES, INC.,  
and DIRECTV, LLC,<sup>1</sup>  
Petitioner,

v.

BROADBAND iTV, INC.,  
Patent Owner.

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IPR2020-01267  
Patent 10,028,026 B2

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

ARBES, *Administrative Patent Judge*.

ORDER

Granting-in-Part Patent Owner's Motions to Seal  
*37 C.F.R. §§ 42.14, 42.54*

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<sup>1</sup> 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.

Patent Owner filed a motion to seal Exhibits 2035–2038, 2047, 2050–2061, 2063–2068, 2070, 2073–2102, 2104–2109, 2117–2127, 2129–2151, 2154–2166, 2177–2179, and 2181–2185, as well as portions of its Response referring to the exhibits filed under seal. Paper 37 (“Mot.”). Patent Owner filed the exhibits and an unredacted version of its Response (Paper 35) as “Parties and Board Only” in the Patent Trial and Appeal Board End to End (PTAB E2E) system, and filed a redacted version of the Response (Paper 36) as “Public.” Patent Owner requests entry of the Board’s default protective order. Mot. 1, 10, App’x A. Petitioner did not file an opposition to the motion to seal.

Petitioner filed additional motions to seal portions of Petitioner’s Reply and Patent Owner’s Sur-Reply referring to the exhibits previously filed under seal. Papers 50, 53. The parties filed unredacted versions of the Reply (Paper 45) and Sur-Reply (Paper 48) as “Parties and Board Only,” and redacted versions of the Reply (Paper 54) and Sur-Reply (Paper 49) as “Public.” Patent Owner states that Petitioner does not oppose the motions. *See* Paper 50, 1; Paper 53, 1.

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; a party, however, may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. Only “confidential information” is protected from disclosure. 37 C.F.R. § 42.54. In that regard, the Patent Trial and Appeal

Board Consolidated Trial Practice Guide (Nov. 2019), 19, *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“Trial Practice Guide”), provides:

The rules aim to 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.

...

*Confidential Information:* The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. 37 C.F.R. § 42.54.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a).

“Good cause” for sealing is established by a “sufficient explanation as to why” the “information sought to be sealed is confidential information,” a demonstration that the information is not “excessively redacted,” and a showing that, on balance, the strong “public[] interest in maintaining a complete and understandable record” is outweighed by “the harm to a party, by disclosure of information” and “the need of either party to rely specifically on the information at issue.” Consequently, a movant to seal must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

*Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative) (citations omitted) (“*Argentum*”).

The filing party bears the burden of proof in showing entitlement to the relief requested in a motion to seal. 37 C.F.R. § 42.20(c).

Patent Owner categorizes the documents filed under seal into five groups, which we address in turn.

*Inventor Emails:* Patent Owner argues that Exhibits 2047, 2056–2060, 2064, 2065, 2068, 2073–2092, 2094–2102, 2104–2109, 2117–2119, 2121, 2122, 2130, 2131, 2136, 2138–2141, 2143–2149, 2155, 2156, 2159–2163, 2166, 2179, and 2181–2184 are “company emails that describe the design of [Patent Owner’s] systems, internal company communications involving other employees and personally identifiable information, as well as communications with its attorney of record.”

Mot. 6–7. According to Patent Owner, each of the exhibits “contains highly sensitive and proprietary technical information about Patent Owner’s product development as it relates to design, implementation, and testing.”

*Id.* at 7. Patent Owner states that “all relevant information [in the exhibits] is highly sensitive confidential business information,” and, thus, Patent Owner did not file redacted versions of the exhibits. *Id.*

We have reviewed the referenced materials and note that it appears that significant portions of the emails do not include confidential information (e.g., portions of Exhibits 2056, 2065, 2073, 2075, 2077–2086, 2089, 2091, 2096–2100, 2106–2108, 2141, and 2181). Further, Patent Owner has not explained with any particularity why the content of each exhibit is “confidential information” under 35 U.S.C. § 316(a)(7) and 37 C.F.R. § 42.54, other than to assert that the exhibits as a whole pertain to either product development, internal company communications, or communications with attorneys. *See* Mot. 6–7. Nor does Patent Owner provide an explanation as to any of the considerations identified above for establishing good cause to seal material in an *inter partes* review. *See*

*Argentum*, Paper 27 at 3–4. Patent Owner has not made a sufficient showing of good cause with respect to the exhibits categorized as “Inventor Emails.”

*Technical Documents:* Patent Owner argues that Exhibits 2050–2055, 2063, 2070, 2093, 2123–2127, 2129, 2132–2135, 2137, 2142, 2150, 2151, 2154, 2157, 2158, 2164, 2165, and 2178 are “technical documents describing the design and implementation of Patent Owner’s products,” each of which in its entirety is “highly sensitive and proprietary technical information about Patent Owner’s product development as it relates to design, implementation, and testing.” Mot. 7. Upon reviewing the materials sought to be sealed, it appears that Patent Owner’s characterization is accurate for each of the exhibits, with one exception. Exhibit 2055 appears to fall under the category of “Inventor Emails” rather than “Technical Documents.” Patent Owner has established good cause to seal all other exhibits categorized as “Technical Documents.”

*Draft Patent Applications:* Patent Owner argues that Exhibits 2061, 2066, 2067, 2120, 2177, and 2185 are “material for Patent Owner’s draft patent applications” that “include confidential material and appear to have been prepared with the assistance of counsel.” Mot. 8. No further explanation is provided. Patent Owner has not explained sufficiently and with particularity why the content of each exhibit is “confidential information” under 35 U.S.C. § 316(a)(7) and 37 C.F.R. § 42.54, or addressed any of the considerations identified above for establishing good cause. *See* Mot. 8; *Argentum*, Paper 27 at 3–4. Patent Owner has not made a sufficient showing of good cause with respect to the exhibits categorized as “Draft Patent Applications.”

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