

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 B2

**PATENT OWNER BROADBAND iTV, INC.’S REVISED MOTION TO
SEAL UNDER 37 C.F.R. §§ 42.14 AND 42.54**

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

Pursuant to the Board’s Order of October 7, 2021 (Paper 57), Patent Owner Broadband iTV, Inc. (“Patent Owner”), submits this Revised Motion to Seal to request that the confidential, unredacted versions of the Patent Owner’s Response (Paper 35), Petitioner’s Reply (Paper 45), and Patent Owner’s Sur-Reply (Paper 48), and Exhibits 1053-1055, 1068, and 2036 (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 the confidential documents contain Patent Owner’s sensitive, non-public information that a business would not make public. Patent Owner therefore requests that the Board seal the confidential documents under the Board’s Default Protective Order, previously entered in this case. Paper 57, 8.

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. Petitioner does not oppose this Revised Motion.

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 information that is contained in the confidential documents.

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

Certain information in the confidential, unredacted versions of Patent Owner’s Response, Petitioner’s Reply, Patent Owner’s Sur-Reply, and Exhibits 1053-1055, 1068, and 2036 is confidential and thus has not been published or otherwise made public.² Patent Owner certifies that, to the best of its knowledge, the information sought to be sealed has not been published or otherwise made public.

² Upon reconsideration, Patent Owner no longer seeks to seal any portions of Exhibits 2035, 2037, 2038, 2047, 2056–2061, 2064, 2065-2068, 2073–2092, 2094–2102, 2104–2109, 2117–2122, 2130, 2131, 2136, 2138–2141, 2143–2149, 2155, 2156, 2159–2163, 2166, 2177, 2179, and 2181–2185.

IV. GOOD CAUSE EXISTS FOR SEALING THE CONFIDENTIAL INFORMATION.

The Board routinely seals technical documents, as well as papers and testimony 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 confidential documents are not confidential, portions of these confidential documents discuss or reference information found in confidential technical documents for which the Board previously found good cause to seal.³ Good cause similarly exists to seal and keep this information confidential because it includes details of sealed, confidential technical documents that would be valuable to Patent Owner's competitors and harmful to Patent Owner and possibly third parties if made public. Accordingly, the Board should seal and keep this information confidential.

Public disclosure of the confidential documents would significantly harm

³ On October 7, 2021, the Board granted Patent Owner's Motions to Seal with respect to Exhibits 2050–2054, 2063, 2070, 2093, 2123–2127, 2129, 2132–2135, 2137, 2142, 2150, 2151, 2154, 2157, 2158, 2164, 2165, and 2178. Paper 57, 5, 7-8.

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