

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 MOTION UNDER 37 C.F.R.
§§ 42.14 AND 42.54 TO SEAL PATENT OWNER’S DEMONSTRATIVE
EXHIBIT (EXHIBIT 2190) AND PETITIONER’S DEMONSTRATIVE
EXHIBIT (PAPER 65)**

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, unredacted versions of Patent Owner’s demonstrative exhibit for oral hearing (Exhibit 2190, “Patent Owner’s demonstrative exhibit”) and Petitioner’s demonstrative exhibit for oral hearing (Paper 65, “Petitioner’s demonstrative exhibit”) be sealed under 37 C.F.R. §§ 42.14 and 42.54. Good cause to seal these exhibits exists because they contain Patent Owner’s sensitive, non-public information that a business would not make public. Patent Owner therefore submits this Motion to Seal Patent Owner’s demonstrative exhibit and Petitioner’s demonstrative exhibit under the Board’s Default Protective Order, previously entered in this case. *See* 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 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 Patent Owner’s demonstrative exhibit and Petitioner’s demonstrative exhibit.

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 demonstrative exhibit and Petitioner’s demonstrative exhibit is confidential and thus has not been published or otherwise made public. 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, 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 Patent Owner’s demonstrative exhibit and Petitioner’s demonstrative exhibit are not confidential, portions of these exhibits reference information found in confidential technical documents for which the Board previously found good cause to seal.² 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 Patent Owner’s competitive and strategic position. The public interest also will not be harmed by granting this Motion to Seal Patent Owner’s demonstrative exhibit and Petitioner’s demonstrative exhibit as “**PROTECTIVE ORDER**”

² 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. On October 26, 2021, the Board further granted Patent Owner’s Revised Motion to Seal Exhibits 1053-1055, 1068, and 2036, and Patent Owner’s Response, Petitioner’s Reply, and Patent Owner’s Sur-Reply, which reference the exhibits sealed on October 7.

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