

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,
v.

KOSS CORPORATION,
Patent Owner.

IPR2021-00600
Patent 10,298,451 B1

Before PATRICK R. SCANLON, DAVID C. McKONE,
and NORMAN H. BEAMER, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

ORDER
Granting Petitioner's Motion to Seal Under Default
Protective Order

35 U.S.C. § 316; 37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

On September 9, 2021, we authorized Koss Corporation (“Patent Owner”) to file a motion for additional discovery (“Motion”), pursuant to 37 CFR § 42.51(b)(2)(i). *See* Ex. 3001. Apple Inc. (“Petitioner”)¹ was authorized to file an Opposition and Patent Owner was authorized to file a reply. *Id.* Patent Owner filed the Motion (“Mot.,” Paper 12), Petitioner filed its Opposition (“Opp.,” Paper 13), and Patent Owner filed its Reply (“Reply,” Paper 16).

The Motion sought “[s]ales revenue and quantity of units sold, by calendar quarter, for the Apple HomePods and HomePod Minis since the commercial introduction of those products.” Mot. 1 (citing Ex. 2014, 22).

In a November 24, 2021, Order (Paper 19), we granted Patent Owner’s motion for additional discovery, but also ordered “that within seven (7) days of the date of this order, Patent Owner and Petitioner shall meet and confer regarding a stipulation that would avoid the need for the requested additional discovery.”

The parties were subsequently granted an extension of the meet and confer deadline, and on December 15, 2021, Petitioner filed an Unopposed Motion To Seal (“Mot. Seal,” Paper 23), indicating that the parties had met and conferred, and requesting authorization to file under seal “certain filings in this case, including the Joint Agreement Regarding Additional Discovery filed concurrently herewith” (“Agreement,” Paper 24), under the Board’s

¹ The Petition challenges US Patent No. 10,298,451 B1, issued May 21, 2019 (’451 patent, Ex. 1001).

² Patent Owner’s Request for Additional Discovery.

Default Protective Order.³ Mot. Seal 2. Petitioner represents that Patent Owner does not oppose the motion. *Id.*

II. THE “GOOD CAUSE” STANDARD

In an *inter partes* review, the moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). A party moving to seal must show “good cause” for the relief requested. 37 C.F.R. § 42.54(a).

The “good cause” standard for granting a motion to seal reflects the strong public policy for making all information in an *inter partes* review open to the public. 37 C.F.R. § 42.54; *see Argentum Pharms. LLC v. Alcon Research, Ltd.*, Case IPR2017-01053 (PTAB Jan. 19, 2018) (Paper 27) (informative), slip op at 3. Unlike in district court, where a party routinely will determine whether a document is produced under the terms of a district court protective order, in an *inter partes* review, “the default rule is that all papers . . . are open and available for access by the public.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, Case IPR2012-00001 (PTAB Mar. 14, 2013) (Paper 34), slip op at 2. Thus, to demonstrate “good cause,” the moving party must demonstrate 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, slip op at 3–4; *see also Corning Optical Communications RF, LLC v. PPC Broadband, Inc.*, Case IPR2014-00440 (PTAB April 6, 2015) (Paper

³ Consolidated Trial Practice Guide at 107–22 (App. B, Protective Order Guidelines and Default Protective Order), available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>

46), slip op. at 2 (requiring a demonstration that information is not “excessively redacted”).

III. PETITIONER’S MOTION TO SEAL

The Motion requests that “certain filings in this case, including [the Agreement]” be filed under seal. Motion Seal 2. Petitioner states “[p]ublic disclosure of the [Agreement] has the potential to significantly harm Petitioners’ competitive position because it would allow competitors to access highly sensitive information regarding litigation strategy and Petitioners’ financial data.” *Id.*

After consideration of the Motion To Seal and the applicable record, we are persuaded that Petitioner has demonstrated good cause to seal the Agreement. Petitioner’s request that the Agreement be sealed is *granted*. We take no action on any other filings in this case, which would be subject to separate requests for authorization to file under seal.

IV. THE JOINTLY PROPOSED PROTECTIVE ORDER

As discussed, Petitioner requests that the default Protective Order govern the materials in this proceeding as set forth in the Practice Guide. Mot. Seal 2. As stated in the Scheduling Order entered in this proceeding, “[t]he Board encourages the parties to adopt the Board’s default protective order if they conclude that a protective order is necessary.” Paper 10, 2. Accordingly, the Default Protective Order will govern the treatment and filing of confidential information in the instant proceeding, and the subject Agreement will be sealed pursuant to that order.

V. NOTICE OF POSSIBLE DISCLOSURE

The parties are reminded that confidential information that is subject to a protective order ordinarily becomes public 45 days after final judgment in a trial. Trial Practice Guide, 77 Fed. Reg. at 48,761. The parties are reminded

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that a movant to seal in this proceeding shall assume the risk that its confidential information will become public if relied upon in a final written decision. There is an expectation that information will be made public where the existence of the information is identified in a final written decision following a trial. *Id.* After final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public. *See* 37 C.F.R. § 42.56.

VI. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Motion to Seal the Joint Agreement Regarding Additional Discovery (Paper 24), is granted; and

FURTHER ORDERED that the Board's Default Protective Order shall govern the treatment and filing of confidential information in the instant proceeding unless otherwise modified by the Board.

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