

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

DAEDALUS BLUE, LLC,
Patent Owner.

IPR2021-00831
Patent 8,671,132 B2

Before SALLY C. MEDLEY, HYUN J. JUNG, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

ORDER
Denying Patent Owner's
First Motion to Seal
Granting Patent Owner's Second
Motion to Seal
Denying Petitioner's
Motion to Seal
37 C.F.R. §§ 42.5, 42.14, 42.54

Motions to Seal

In its first unopposed Motion to Seal, Patent Owner seeks to seal Patent Owner's Preliminary Response, the Declaration of David Pease (Ex. 2002) and the Declaration of Linda Duyanovich (Ex. 2003). Paper 6 ("First PO Motion"). In its second unopposed Motion to Seal, Patent Owner seeks to seal Exhibits 2012–2017. Paper 10 ("Second PO Motion"). In its unopposed Motion to Seal, Petitioner seeks to seal Petitioner's Preliminary Reply. Paper 12 ("Petitioner Motion").

There is a strong public policy that favors making information filed in an *inter partes* review open to the public. *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34, 1–2 (PTAB Mar. 14, 2013). The standard for granting a motion to seal is "good cause," and the party moving to seal a document bears the burden of proving entitlement to the requested relief. 37 C.F.R. §§ 42.20(c), 42.54(a). "Good cause" can be established by showing sufficiently that (a) the information sought to be sealed is truly confidential, (b) a concrete harm would result to a party upon its public disclosure, (c) there exists a genuine need to reply in the trial on the specific information sought to be sealed, and (d) the interest in maintaining the confidentiality of the information outweighs the strong public interest in maintaining an open and understandable record. *See Argentum Pharms. LLC v. Alcon Research Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

Second PO Motion

We have considered the arguments presented in the Second PO Motion and determine that good cause has been established for sealing Exhibits 2012–2017. Specifically, Patent Owner demonstrates that the information sought to be sealed per its motion contains confidential information that third party IBM

IPR2021-00831
Patent 8,671,132 B2

“maintains as confidential business and technical information.” Second PO Motion 2. Accordingly, we grant Patent Owner’s Second Motion to Seal, including Patent Owner’s unopposed request for entry of the Board’s default protective order. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019), <https://www.uspto.gov/TrialPracticeGuideConsolidated>, (Appendix B) (“Trial Practice Guide”).

First PO Motion

We have considered the arguments presented in the First PO Motion and determine that good cause has not been established for sealing Patent Owner’s Preliminary Response and Exhibits 2002 and 2003. Patent Owner fails to show good cause that the redacted information is confidential. For example, in the redacted version of its Preliminary Response (Paper 8), Patent Owner redacts the descriptions or titles of Exhibits 2012–2017. Paper 8, v, 21–22. Yet, in the Second PO Motion, Patent Owner makes such descriptions publically available. Second PO Motion, 3–4. Thus, there appears to be no reason to redact such descriptions from the Preliminary Response. Similarly, the redacted versions of Exhibits 2002 and 2003 contain redactions of the descriptions of Exhibits 2012–2017.¹ *See, e.g.*, public version of Ex. 2002 ¶¶ 15–17. But again, the descriptions redacted have been made public by Patent Owner. Second PO Motion, 3–4. There are additional redactions that seem unnecessary, such as redacting a listing of page numbers from Exhibits 2012–2017. *See, e.g.*, public version of Ex. 2002 ¶ 18. There is no explanation in

¹ Both the redacted and sealed versions of Exhibit 2002 have a solid black box following paragraph 17 without any explanation for what is redacted by the box. Similarly, the redacted and sealed versions of Exhibit 2003 have a solid black box following paragraph 18 without any explanation for what is redacted by the box.

the First PO Motion as to why page number sequences are confidential information. Indeed, in light of Patent Owner's description of Exhibits 2012–2017 made in the Second PO Motion, we see nothing in the Preliminary Response or Exhibits 2002 and 2003 that contains confidential information. Patent Owner has not established good cause to seal the Preliminary Response or Exhibits 2002 and 2003.

Patent Owner also filed a redacted (public) and sealed version of its Patent Owner Preliminary Sur-reply without filing a motion to seal. Papers 15, 16. The redacted material appears to include information that Patent Owner has already made public as explained above. Paper 16, iii–iv, 5–8.

Petitioner Motion

We have considered the arguments presented in the Petitioner Motion and determine that good cause has not been established for sealing Petitioner's Preliminary Reply. Petitioner fails to show good cause that the redacted information is confidential. Indeed, Petitioner merely states that good cause exists for sealing Petitioner's Preliminary Reply without any explanation for why that is so. Petitioner Motion 1. Such an explanation falls far short from meeting the good cause standard. We observe that the information Petitioner seeks to maintain as confidential is third party IBM alleged confidential information. Patent Owner appears to be in communication with IBM as to which information should be maintained confidential. The parties shall work together to ascertain what, if anything, needs to remain confidential in the filing of a revised motion to seal Petitioner's Preliminary Reply.

Summary

In summary, the Second PO Motion to seal Exhibits 2012–2017 is granted. The First PO Motion and Petitioner Motion are denied without prejudice for the parties to refile motion(s) to seal. Any revised motions should cover all materials that the moving party believes should be maintained under seal, and should

explain individually and in detail why each individual exhibit or paper includes confidential information. If no revised motion to seal is received for a particular exhibit or paper, the document will be unsealed.

We also advise the parties that “[c]onfidential information that is subject to a protective order ordinarily would become public . . . 45 days after final judgment in a trial.” Trial Practice Guide at 21–22. “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.* at 22. “A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.” *Id.*; see 37 C.F.R. § 42.56.

Order

It is:

ORDERED that Patent Owner’s Second Motion to Seal is *granted*;

FURTHER ORDERED that Patent Owner’s First Motion to Seal and Petitioner’s Motion to Seal are *denied*;

FURTHER ORDERED that the Board’s default protective order is entered and shall govern the treatment of confidential information in this proceeding; and

FURTHER ORDERED that the parties are authorized to file, within ten days of this Order, a revised motion to seal as to any exhibits and papers filed under seal but for which the motions to seal are denied.

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