

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD., and
NINTENDO OF AMERICA INC.,

Petitioners,

v.

ANCORA TECHNOLOGIES, INC.,

Patent Owner.

Case IPR2021-01338
U.S. Patent No. 6,411,941

**PETITIONERS' MOTION
UNDER 37 C.F.R. §§ 42.14 AND 42.54 TO SEAL
EXHIBITS 1034, 1050-1057 AND PETITIONERS' REPLY**

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I. INTRODUCTION

Nintendo Co., Ltd. and Nintendo of America Inc. (collectively, “Petitioner”) request that confidential exhibits 1034 and 1050-1057 (collectively, “the Confidential Exhibits”), as well as portions of Petitioner’s Reply quoting or characterizing such documents, be sealed under 37 C.F.R. §§ 42.14 and 42.54.

All of the confidential material submitted in this proceeding belongs to Patent Owner. Good cause to seal exists because Patent Owner has represented to Petitioner that certain information in the Confidential Exhibits is sensitive, non-public information. Petitioner therefore submits this Motion to Seal under the jointly proposed Protective Order in this case (EX2038).

Pursuant to 37 C.F.R. § 42.54(a), Petitioner’s counsel conferred in good faith with Patent Owner’s counsel in an attempt to resolve any dispute about this Motion. Patent Owner does not oppose this motion.

II. GOVERNING RULES AND PTAB GUIDANCE

While under 35 U.S.C. § 316(a)(1), papers filed in an *inter partes* review are generally open and available for access by the public, a party may file a concurrent Motion to Seal to protect public disclosure of certain confidential information, which has the effect of sealing the information at issue pending resolution of the motion. 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 set forth in the TPG, Petitioner seeks to prevent the disclosure of sensitive information that Patent Owner has represented is contained in the confidential documents.

III. IDENTIFICATION OF CONFIDENTIAL INFORMATION

The Confidential Exhibits at issue here comprise certain patent license agreements (EX1050-EX1057) that Patent Owner produced in this proceeding in view of Petitioner's granted Motion for Additional Discovery (Paper 25), as well as deposition testimony discussing those license agreement (EX1034). The confidential information also includes portions of Petitioners' Reply, which quotes and characterizes those Confidential Exhibits. Patent Owner has represented to Petitioner that the agreements are confidential and thus have not been published or otherwise made public. In particular, pursuant to the Board's June 17, 2022 Order (Paper 29), Patent Owner designated the agreements as "THIRD-PARTY CONFIDENTIAL – PARTY ACCESS LIMITED" under the Protective Order in

this proceeding (EX2038). Under the terms of the Protective Order, documents so designated must be filed under seal. (EX2038, ¶4(A)(i).)

A. The Confidential Exhibits

Petitioner is not in a position to dispute Patent Owner's designation of its own Confidential Exhibits and confidential information. Nor is Petitioner in a position to identify the specific information within the Confidential Exhibits that is confidential, as such information belongs solely to Patent Owner, and Patent Owner has not specifically identified such information for Petitioner. Accordingly, Petitioner will not attempt to redact the Confidential Exhibits—rather, Petitioner files the Confidential Exhibits in their entirety, and is not filing public versions of the Confidential Exhibits.

B. Petitioner's Reply

Petitioner has, to the best of its ability, limited material in its Reply to non-confidential information. It has redacted confidential information citing, quoting, or characterizing the Confidential Exhibits. Pursuant to guidance in the TPG, Petitioner has filed both confidential and non-confidential versions of its Reply.

* * *

To the best of Petitioner's knowledge, and based on Patent Owner's representation that the Confidential Exhibits and the information contained therein

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