UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ROKU, INC. and VIZIO, INC.,
Petitioners,

v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2021-01406
U.S. Patent No. 6,411,941

**PETITIONERS' MOTION
UNDER 37 C.F.R. §§ 42.14 AND 42.54 TO SEAL
EXHIBITS 1034, 1050-1054, AND PETITIONERS' REPLY**

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U.S. Patent and Trademark Office
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I. INTRODUCTION

Roku, Inc. and Vizio, Inc. ("Petitioners") request that confidential exhibits 1034, 1050-1054 (collectively, "the Confidential Exhibits"), as well as portions of Petitioners' 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 Petitioners that certain information in the Confidential Exhibits is sensitive, non-public information. Petitioners therefore submit this Motion to Seal under the jointly proposed Protective Order in this case (EX2038).

Pursuant to 37 C.F.R. § 42.54(a), Petitioners' 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, Petitioners seek 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, EX1051, EX1052, EX1053, and EX1054) that Patent Owner produced in this proceeding in view of Petitioners' granted Motion for Additional Discovery (Paper 25), as well as deposition testimony discussing such agreements (EX1034). The confidential information also includes portions of the Petitioners' Reply, which quotes and characterizes those Confidential Exhibits. Patent Owner has represented to Petitioners 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 and deposition testimony 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

Petitioners are not in a position to dispute Patent Owner's designation of its own Confidential Exhibits and confidential information. Nor are Petitioners 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 Petitioners. Accordingly, Petitioners will not attempt to redact the Confidential Exhibits—rather, Petitioners file the Confidential Exhibits in their entirety, and are not filing public versions of the Confidential Exhibits.

B. Petitioners' Reply

Petitioners have, to the best of their ability, limited material in their Reply to non-confidential information. They have redacted confidential information citing, quoting, or characterizing the Confidential Exhibits. Pursuant to guidance in the TPG, Petitioners have filed both confidential and non-confidential versions of the Reply.

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