

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ROKU, INC. and VIZIO, INC.,
Petitioner,
v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner.

IPR2021-01406
Patent 6,411,941 B1

Before THU A. DANG, KEVIN W. CHERRY, and RYAN H. FLAX,
Administrative Patent Judges.

DANG, *Administrative Patent Judge.*

DECISION

Granting Petitioner's Motion to Seal
37 C.F.R. §§ 42.5 and 42.14

I. INTRODUCTION

On February 22, 2022, we instituted trial in the instant IPR proceeding. Paper 10. On May 3, 2022, Patent Owner filed a Response to Petition. Papers 21 (“sealed”), 22 (“redacted”). On July 22, 2022, Petitioner filed a Reply to Patent Owner’s Response (“Pet. Reply,” Papers 32 (“redacted”), 33 (“sealed”)), along with Exhibits 1029–1054.

Also, on July 22, 2022, Petitioner filed the Motion to Seal (Paper 34 (“Motion to Seal” or “Motion”). Petitioner requests to seal Exhibits 1034, 1050–1054 and Petitioner’s Reply, and contends that “Patent Owner does not oppose this [M]otion.” *Id.* at 1. Patent Owner did not file an opposition to the Motion. For the reasons below, we grant Petitioner’s Motion to Seal, thereby sealing Exhibits 1034, 1050–1054 (collectively, “the Confidential Exhibits”) and Petitioner’s Reply.

II. DISCUSSION

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. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3 (PTAB Jan. 19, 2018) (informative). When assessing whether the good cause standard has been met, we may consider whether (1) the information at issue is confidential, (2) 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) the

interest in maintaining confidentiality as to the information outweighs the strong public interest in an open record. *Id.* at 4.

Petitioner contends that the Confidential Exhibits at issue “comprise certain patent license agreements” that Patent Owner produced “in view of Petitioner’s granted Motion for Additional Discovery (Paper 25), as well as deposition testimony discussing those license agreements (EX1034).”

Mot. 2. Petitioner contends that Patent Owner has represented that “the agreements are confidential and thus have not been published or otherwise made public.” *Id.* In particular, Petitioner contends that, 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 (Ex. 2038), wherein, under the terms of the Protective Order, documents so designated must be filed under seal. *Id.* at 2–3 (citing Ex. 2038 ¶ 4(A)(i)).

According to Petitioner, the confidential information also includes “portions of Petitioners’ Reply, which quotes and characterizes those Confidential Exhibits.” Mot. 2. Petitioner contends that, to the best of its ability, it has limited material in the Reply to non-confidential information and has redacted confidential information citing, quoting or characterizing the Confidential Exhibits. *Id.* at 3.

Petitioner then contends that, by designating the Confidential Exhibits as confidential under the Protective Order, Patent Owner has represented that public disclosure of the agreements and information contained therein would significantly harm Patent Owner and potentially violate confidentiality provisions associated with those Confidential Exhibits. Mot. 4. According to Petitioner, “[t]he public interest will not be harmed by granting this Motion to Seal the documents as ‘PROTECTIVE

ORDER MATERIAL,” but rather, “would achieve ‘a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.’” *Id.* (citing 77 Fed. Reg. at 48,760).

After reviewing the record before us, we determine that the Confidential Exhibits and the redacted information in the Reply (*compare* Papers 32 *and* 33) are truly confidential and thus properly sealed. We also determine that Petitioner has adequately shown that Patent Owner would be harmed by not sealing the information, that the parties have a need to rely on this information at trial, and that the interest in maintaining the information as confidential outweighs the public interest in having the information unsealed. Accordingly, we conclude that good cause exists to seal the Confidential Exhibits and the redacted information in Petitioner’s Reply.

III. ORDER

Accordingly, it is hereby:

ORDERED that the Motion to Seal (Paper 34) is *granted*;

FURTHER ORDERED that Petitioner’s Reply to Patent Owner’s Response (Paper 32) and the Confidential Exhibits (Exs. 1034, 1050–1054) will continue to be maintained under seal.

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