

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FEDERAL RESERVE BANK OF ATLANTA, FEDERAL RESERVE BANK OF BOSTON, FEDERAL RESERVE BANK OF CHICAGO, FEDERAL RESERVE BANK OF CLEVELAND, FEDERAL RESERVE BANK OF DALLAS, FEDERAL RESERVE BANK OF KANSAS CITY, FEDERAL RESERVE BANK OF MINNEAPOLIS, FEDERAL RESERVE BANK OF NEW YORK, FEDERAL RESERVE BANK OF PHILADELPHIA, FEDERAL RESERVE BANK OF RICHMOND, FEDERAL RESERVE BANK OF SAN FRANCISCO, and FEDERAL RESERVE BANK OF ST. LOUIS,
Petitioner,

v.

BOZEMAN FINANCIAL LLC,
Patent Owner.

Case CBM2017-00036
Patent 8,768,840 B2

Before MICHAEL W. KIM, WILLIAM V. SAINDON, and
KEVIN W. CHERRY, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

ORDER

Granting-in-Part and Denying-in-Part Petitioner's Motions to Seal
37 C.F.R. §§ 42.5, 42.54

I. INTRODUCTION

On May 19, 2017, Petitioner filed a motion to seal its Reply to Patent Owner's Preliminary Response (Paper 8) along with Exhibits 1023 and 1024. Paper 9 ("First Mot." or "First Motion"). With the First Motion, Petitioner filed a redacted version of its Reply and Exhibit 1023. *See* Papers 10 (Petitioner's Reply (redacted)) and 11 (Exhibit 1023 (redacted)). On January 10, 2018, Petitioner filed a second motion to seal portions of its Reply to the Patent Owner Response (Paper 27). *See* Paper 30 ("Second Mot." or "Second Motion"). Petitioner also filed a redacted version of its Reply to the Patent Owner Response. *See* Paper 28.

Both parties have also filed certain papers and exhibits under seal without a corresponding motion to seal. Patent Owner filed Patent Owner's Sur-Reply to Petitioner's Reply to the Patent Owner Preliminary Response (Paper 12, "Sur-Reply") and the Declaration of William O. Bozeman, III in Support of Patent Owner's Sur-Reply (Paper 13, "Second Bozeman Declaration") under seal without a corresponding motion to seal these papers. Patent Owner filed a redacted version of the Second Bozeman Declaration (*see* Paper 14), but did not file a redacted version of its Sur-Reply. Petitioner filed a copy of its demonstratives under seal without a corresponding motion to seal. *See* Ex. 1025 (sealed version of Petitioner's demonstratives). Petitioner did include a redacted version of its demonstratives. *See* Ex. 1026 (redacted version of Petitioner's demonstratives).

In both its motions to seal, Petitioner represents that these papers and exhibits "summarize[] confidential communications exchanged between The Federal Reserve Bank of Atlanta (one of the named Petitioners) and Bozeman Financial (the Patent Owner) concerning Petitioners' alleged infringement of U.S. Patent Nos. 6,754,640 and 8,768,840, and Bozeman Financial's related proposals." First Mot. 2; Second Mot. 1. Petitioner contends that "[t]hese communications

were exchanged after the parties executed a Mutual Confidentiality Agreement, which requires the parties not to disclose to third parties Confidential Information, or even the existence of any discussions or disclosures covered under the Agreement.” *Id.* (citing Paper 6, Ex. 5 ¶ 2(e)-(f)). Patent Owner does not oppose these requests.

Following the oral hearing and at our request (*see* Tr. 75:11–77:4), the parties submitted a redacted version of Exhibit 1024. *See* Exhibit 1024 (redacted).¹ Petitioner’s Motions are *granted-in-part* and *denied-in-part*.

II. ANALYSIS

“The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information.” 37 C.F.R. § 42.54(a). “There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, Case IPR2012–00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54. That standard includes showing that the information addressed in the motion to seal is truly confidential, and that such confidentiality outweighs the strong public interest in having the record open to the public. *See Garmin*, slip op. at 2–3. The moving party bears the burden of showing that the relief requested should be granted, and establishing that the information sought to be sealed is confidential information. 37 C.F.R. § 42.20(c).

A. Exhibits 1025 and 1026

Exhibits 1025 and 1026 are unredacted and redacted, respectively, copies of Petitioner’s demonstratives. *See* Ex. 1025 (sealed version of Petitioner’s

¹ Exhibit 1024 is filed in the PTAB E2E system as Exhibit 2011.

demonstratives); Ex. 1026 (unsealed version of Petitioner’s demonstratives). As we explained in a previous order, Patent Owner agreed to waive any confidentiality in the sealed portions of the demonstratives. *See* Paper 36, 3. Thus, we directed Petitioner to refile its demonstratives as a public document. Petitioner has done so. *See* Ex. 1027. In order to minimize confusion in the record, we expunge Exhibits 1025 and 1026 because they are redundant to Exhibit 1027. *See* 37 C.F.R. § 42.7.

B. Exhibit 1024

Exhibit 1024 consists of an email and attached memorandum from Patent Owner’s counsel to Petitioner, dated September 29, 2016. As we explained above, following the oral hearing, the parties have filed a redacted version of Exhibit 1024. The parties seek only limited redactions in the memorandum, consisting of licensing rates (Ex. 1024, 18) and one limitation of the claim mapping Patent Owner performed of Petitioner’s products (Ex. 1024, 20). The parties also seek to redact some emails contained in the appendices to the memorandum. *See* Ex. 1024, 31, 50–52. As we noted above, Petitioner sought to seal Exhibit 1024 because it “summarize[d], and/or comprise[d] confidential communications exchanged between The Federal Reserve Bank of Atlanta (one of the named Petitioners) and Bozeman Financial (the Patent Owner) concerning Petitioners’ alleged infringement of U.S. Patent Nos. 6,754,640 and 8,768,840, and Bozeman Financial’s related proposals.” First Mot. 2. Petitioner submits “[t]hese communications were exchanged after the parties executed a Mutual Confidentiality Agreement, which requires the parties not to disclose to third parties Confidential Information, or even the existence of any discussions or disclosures covered under the Agreement.” *Id.* (citing Paper 6, Ex. 5 at ¶ 2(e)-(f)).

Here, the parties have provided a redacted version with only limited redactions. The information currently sought to be sealed relates to confidential licensing rates and communications only tangentially related to the current dispute. We did not rely on any of the material sought to be sealed. We determine that Petitioner has shown good cause to maintain the redacted portions of Exhibit 1024 under seal. Thus, we *grant* Petitioner's First Motion to Seal with respect to Exhibit 1024.

C. Exhibit 1023

Exhibit 1023 is the Declaration of Richard M. Fraher in Support of Petitioner's Reply. *See* Ex. 1023; Paper 11. Petitioner filed a redacted version of Exhibit 1023. *See* Paper 11 (redacted version of Exhibit 1023). Petitioner seeks to seal a portion (Paragraphs 8–14) of Exhibit 1023 because the redacted paragraphs “summarize, and/or comprise confidential communications exchanged between The Federal Reserve Bank of Atlanta (one of the named Petitioners) and Bozeman Financial (the Patent Owner) concerning Petitioners' alleged infringement of U.S. Patent Nos. 6,754,640 and 8,768,840, and Bozeman Financial's related proposals.” First Mot. 2. We relied on some of the portions of Exhibit 1023 that Petitioner seeks to seal in our Final Written Decision.

At this time, Petitioner has not shown good cause to seal Paragraphs 8–14 of Exhibit 1023. When the redactions to Exhibit 1023 were filed, the parties had not yet agreed to a redacted version of Exhibit 1024. Instead, pursuant to the parties' Mutual Confidentiality Agreement (“MCA”) mentioned above, Petitioner believed that any reference to the post-MCA discussions between the parties should be kept confidential. *See* First Mot. 2. However, the parties have now reached an agreement to provide a public version of Exhibit 1024. Nearly all of the redacted paragraphs of Exhibit 1023 discuss portions of Exhibit 1024 that are now in the

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