

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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**GARMIN INTERNATIONAL, INC. ET AL.**  
Petitioner

v.

**CUOZZO SPEED TECHNOLOGIES LLC**  
Patent Owner

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Case IPR2012-00001 (JL)  
Patent 6,778,074

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Before JAMESON LEE, MICHAEL P. TIERNEY, and JOSIAH C. COCKS,  
*Administrative Patent Judges.*

LEE, *Administrative Patent Judge.*

DECISION  
Revised Motion to Seal  
*37 C.F.R. §§ 42.14 and 42.54*

## INTRODUCTION

On March 11, 2013, Cuozzo filed a Motion to Seal requesting to seal the exhibits of the Declaration of Inventor Giuseppe A. Cuozzo, which includes Exhibits A-P within Exhibits 3000 and 4000.<sup>1</sup> (Paper 33.) The exhibits contain factual evidence to support Cuozzo's patentability contention that Inventor Giuseppe A. Cuozzo invented the claimed subject matter before the dates of certain prior art relied on by Garmin.

That initial motion was denied by the Board in a decision dated March 14, 2013. (Paper 34.) In that decision, the Board issued guidance on what should be contained in a proper motion to seal evidence, and provided Cuozzo an opportunity to file a Revised Motion to Seal in accordance with the guidance.

On March 21, 2013, Cuozzo filed a Revised Motion to Seal, limiting the exhibits requested to be sealed to Exhibits B, I, J, K, L, and P contained in Revised Exhibits 3000 and 4000 (labeled as "Protective Order Material"). Cuozzo moved Exhibits A, C-H, and M-O to Revised Exhibits 3001 and 4001 which are open to the public. The Board appreciates Cuozzo's effort to comply with the guidance.

Cuozzo also submitted a copy of the Board's default protective order as the proposed protective order (Exhibit 5000). (Revised Motion, 7: ¶ V.) Because the parties agree to the terms of the protective order, the Board hereby enters the

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<sup>1</sup> Patent owner's exhibits should have been numbered in the range of 2001-2999. *See* 37 C.F.R. § 42.63(c). In the interest of efficiency in this case, the Board exercises its discretion to accept the improperly numbered exhibits. 37 C.F.R. §§ 42.1(b) and 42.5(b).

protective order. As a consequence, the default protective order governs the treatment and filing of confidential information of this proceeding.

## DISCUSSION

There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in an issued patent and therefore affects the rights of the public. Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; and a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion.

Similarly, 37 C.F.R. § 42.14 provides:

The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7)(“The Director shall prescribe regulations -- . . . providing for protective orders governing the exchange and submission of confidential information”). In that regard, note the *Office Trial Practice Guide*, 77 *Fed. Reg.* 48756, 48760 (Aug. 14, 2012), which provides:

The rules aim to 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.

\* \* \*

*Confidential Information:* The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. § 42.54.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. Cuozzo as the moving party has the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c). We need to know why the information sought to be sealed constitutes confidential information.

A motion to seal is required to include a proposed protective order and a certification that the moving party has in good faith conferred or attempted to confer with the opposing party in an effort to come to an agreement as to the scope of the proposed protective order for this *inter partes* review. 37 C.F.R. § 42.54.

Cuozzo represents that it has conferred with Garmin and that Garmin does not oppose Cuozzo's Revised Motion to Seal. (Revised Motion, 5: ¶ III.) We note that the due date for any opposition by Garmin has passed and Garmin has filed no opposition. Cuozzo also represents that in a related district court proceeding the same information was produced under a protective order and designated as confidential. (Revised Motion, 5: ¶ II.) Those representations are by themselves an insufficient showing of good cause but provide an illuminating context. Also

illuminating is the fact that the Declaration of Inventor Giuseppe A. Cuozzo was submitted by Cuozzo without any portion thereof being covered by a motion to seal and has been available to the public since its submission on March 11, 2013. (Exs. 3001 and 4001.)

Revised Exhibits 3000 and 4000 (labeled as “Protective Order Material”), under seal provisionally, contain the following:

*Exhibit B* is the New Jersey driving record of Giuseppe A. Cuozzo, the named inventor of Cuozzo’s involved patent in this *inter partes* review;

*Exhibit I* is a communication from Invention Submission Corporation to an attorney who performed an initial patentability search based on Giuseppe A. Cuozzo’s invention disclosure, forwarding the remarks of Inventor Giuseppe A. Cuozzo with regard to the patents listed on the initial search report;

*Exhibit J* is a formal Patentability Search Report provided by an attorney to Inventor Giuseppe A. Cuozzo;

*Exhibit K* is an agreement executed between Inventor Giuseppe A. Cuozzo and Invention Submission Corporation;

*Exhibit L* includes a copy of a cashier’s check payable to Invention Submission Corporation and copies of Invention Submission Corporation’s receipts of check and case payments from Inventor Giuseppe A. Cuozzo; and

*Exhibit P* is a copy of a personal check made payable to the United States Patent and Trademark Office for the filing fee of Cuozzo’s involved Patent 6,778,074.

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