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Paper 146
Date: May 4, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RPX CORPORATION,
Petitioner,

v.

APPLICATIONS IN INTERNET TIME, LLC,
Patent Owner.

IPR2015-01750 (Patent 8,484,111 B2)
IPR2015-01751 (Patent 7,356,482 B2)
IPR2015-01752 (Patent 7,356,482 B2)

Before SCOTT R. BOALICK, *Chief Administrative Patent Judge*,
JACQUELINE WRIGHT BONILLA, *Deputy Chief Administrative Patent Judge*,
and SCOTT C. WEIDENFELLER, *Vice Chief Administrative Patent Judge*.

WEIDENFELLER, *Vice Chief Administrative Patent Judge*

ORDER
Denying Petitioner's Motion to Expunge
37 C.F.R. § 42.56¹

¹ This decision pertains to Cases IPR2015-01750, IPR2015-01751, and IPR2015-01752, as Petitioner's Motions to Expunge are substantively the same in each case. Citations are to the paper numbers in Case IPR2015-01750.

I. INTRODUCTION

On March 11, 2021, Petitioner filed a Motion to Expunge certain documents under seal in each of the captioned cases. IPR2015-01750, Paper 143, 14–17 (“Motion” or “Mot.”); *see also* IPR2015-01751, Paper 143; IPR2015-01752, Paper 141.² For any requested document that we deny expungement, Petitioner alternatively requests that the sealed document be kept confidential and separate from the files of the involved patent. Mot. 1. On March 19, 2021, Patent Owner filed an opposition to Petitioner’s motion to expunge the confidential information. Paper 144. Patent Owner requests that we deny Petitioner’s request to expunge and instead maintain the confidential information in the sealed record. *Id.* at 1. For the following reasons, the Motion to expunge in each case is *denied*.

II. ANALYSIS

We previously granted Petitioner’s motions to seal the documents that Petitioner now requests to be expunged. Paper 53; Paper 122. We also *sua sponte* sealed our Final Decision on Remand Terminating Institution, also requested to be expunged. Paper 125.

The Consolidated Trial Practice Guide states the following regarding the treatment of confidential information:

Confidential information that is subject to a protective order ordinarily would become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial. There is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial. A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public. 37 C.F.R. § 42.56. The rule balances the needs of the parties to submit confidential

² We cite to the record in IPR2015-01750, unless otherwise noted.

information with the public interest in maintaining a complete and understandable file history for public notice purposes. The rule encourages parties to redact sensitive information, where possible, rather than seeking to seal entire documents.

Consolidated Trial Practice Guide 21–22 (Nov. 2019) (“TPG”), *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

Petitioner divides its request into (1) documents with redacted versions available; and (2) documents sealed in their entirety without redacted versions available. Petitioner asserts that all of the identified documents include “confidential, sensitive commercial information, including RPX’s IPR litigation strategy, confidential agreements with a third party, communications referring to terms of those confidential agreements, sensitive and improper disclosures of the confidential information, confidential business records, as well as trade secrets.” Mot. 7–8. With respect to documents with redacted versions available, Petitioner further asserts that “[t]he public interest in maintaining a complete and understandable file history for public notice purposes is adequately served by retaining only the redacted versions of the confidential documents in the record.”

Id. at 8.

With respect to the documents sealed in their entirety without redacted versions available, Petitioner asserts that “many of the documents were produced voluntarily by Petitioner. If confidential information produced voluntarily under a protective order were to be disclosed publicly, the producing party would be discouraged from volunteering discovery of confidential information in proceedings before the Board.” *Id.* at 9. Further, Petitioner asserts that 25 of the documents were not cited in any of the Board’s decisions and therefore “Petitioner’s interest in maintaining their confidentiality through expungement far outweighs the (nonexistent) public interest in disclosure of these documents.” *Id.*

The confidential versions of the identified documents provide the basis for certain findings and conclusions in decisions by the Board, including the Final Decision on Remand (Paper 128), which is now designated precedential. Therefore, we determine that it would not be appropriate to expunge the confidential versions of those documents from the record. Rather, we determine that it is appropriate to retain the confidential versions of the identified documents under seal in the record, as requested by Petitioner in the alternative. Mot. 1, 12–13. Retaining all documents under seal will ensure a complete record while adequately addressing Petitioner's interest in maintaining their confidentiality. The redacted public versions of the identified documents will be retained in the record for public access.

I. ORDER

It is hereby

ORDERED that Petitioner's Motion to Expunge in each of the captioned cases is *denied*; and

FURTHER ORDERED that in IPR2015-01750, the confidential versions of Papers 21, 28, 34, 38–41, 51, 98, 100, 101, 112, 125 and Exs. 1019–1025, 1029, 1031–1035, 1037–1043, 1046, 1073–1081, 1090–1092, 1094–1096, 2018–2019, 2022, 2025–2027, and 2030 will remain under seal in the record.

FURTHER ORDERED that in IPR2015-01751, the confidential versions of Papers 20, 28, 34, 38–41, 51, 100, 102, 103, 112, 125, and Exs. 1019–1025, 1029, 1031–1035, 1037–1043, 1046, 1073–1081, 1090–1092, 1094–1096, 2018, 2019, 2022, 2025–2027, 2030 will remain under seal in the record.

FURTHER ORDERED that in IPR2015-01752, the confidential versions of Papers 20, 28, 33, 38–41, 51, 98, 100, 101, 110, 123 and Exs. 1119–1125, 1129,

IPR2015-01750 (Patent 8,484,111 B2)

IPR2015-01751, IPR2015-01752 (Patent 7,356,482 B2)

1131–1135, 1137–1143, 1146, 1173–1181, 1190–1192, 1194–1196, 2018, 2019,

2022, 2025–2027, 2030 will remain under seal in the record.

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