

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner
v.

BRADIUM TECHNOLOGIES LLC
Patent Owner.

Case IPR2016-00449
Patent 8,924,506 B2

Before BRYAN F. MOORE, BRIAN J. McNAMARA, and MINN CHUNG,
Administrative Patent Judges.

CHUNG, *Administrative Patent Judge.*

DECISION ON MOTIONS TO SEAL
37 C.F.R. §§ 42.14 AND 42.54

Introduction

Before us are four motions to seal—one filed by Microsoft Corporation (“Petitioner”) and three filed by Bradium Technologies LLC (“Patent Owner”). All motions to seal are unopposed. The parties stipulated to and filed the Board’s Standing Protective Order on November 11, 2016, as Exhibit A to Patent Owner’s First Motion to Seal. Paper 15, Ex. A. The Stipulated Protective Order is entered.

There is a strong public policy for making all information filed in a quasijudicial 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. Our rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interests in protecting truly sensitive information. Office Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). The standard we apply for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. To grant the motion to seal, we examine why the information sought to be placed under seal constitutes confidential information. Applying these principles, we consider the parties’ motions.

Petitioner’s Motion

Petitioner moves to seal Exhibits 2012, 2013, 2014, 2015 and 2034, filed by Patent Owner and referenced in the Patent Owner Response (Paper 16), on the basis that these Exhibits include Petitioner’s confidential business information. Paper 18 (“Pet. Mot. to Seal”). Petitioner contends that good cause exists for its motion because the Exhibits that are the subject of the motion relate to Microsoft’s preliminary discussions with 3DVU, a prior assignee of U.S. Patent No. 8,924,506 B2 (“the ’506 patent”) that is the subject of this proceeding. Pet. Mot. to Seal 1–2. According to Petitioner, Exhibits 2012 and 2013 reflect Microsoft’s internal

discussions, including pricing terms and policies and procedures for evaluating acquisitions. *Id.* at 2. Petitioner states that Exhibits 2014, 2015, and 2034 reflect confidential communications between Microsoft and the counter-party. *Id.* According to Petitioner, release of these documents will cause competitive harm, e.g., by allowing a competitor to estimate Microsoft's likely pricing range for other companies of similar size and technology. *Id.*

The existence of discussions between Microsoft and 3DVU is not confidential, as it has been revealed by the parties in non-confidential papers. *See, e.g.,* Paper 31, Petitioner Reply to Patent Owner Response ("Pet. Reply"), 26. In addition, in our Final Written Decision we have referenced these discussions and Exhibits 2012, 2013, 2015 and 2034, but not Exhibit 2014. Our references to these Exhibits in the Final Written Decision do not discuss the financial and strategic details that legitimately concern Microsoft. In view of these circumstances, we are persuaded that Microsoft has shown good cause for maintaining the confidentiality of the Exhibits it seeks to protect. One option is to deny the Motion to Seal with respect to Exhibits we do not cite and allow Petitioner to expunge them. However, in view of the state of the record, we maintain the confidential status of Exhibits 2012, 2013, 2014, 2015, and 2034 and leave it to Petitioner's choice whether to move to expunge any confidential Exhibit not referenced in the Final Written Decision.

Patent Owner's Motions

In its First Motion to Seal, Patent Owner moves to seal its Patent Owner Response (Paper 16), as well as Exhibit 2022, Exhibit 2029, and portions of Exhibit 2004. Paper 15 (PO First Mot. to Seal). Patent Owner has filed a redacted public version of its Patent Owner Response (Paper 17). Patent Owner filed a redacted version of Exhibit 2004 as Exhibit 2072.

The confidential version of the Patent Owner Response references Microsoft confidential information in the Exhibits that we have ordered sealed above. Therefore, we grant Patent Owner's Motion to seal the confidential version of the Patent Owner Response (Paper 16).

Patent Owner states that Exhibit 2022 is a confidential report signed by inventor Isaac Levanon that contains technical information, financial summaries, financial terms, and projected sales information. PO First Mot. to Seal 3. Patent Owner provides no explanation as to why this particular information should remain confidential. Nevertheless, as Patent Owner's motion is unopposed and there is no obvious public interest in making the information non-confidential, we exercise our discretion to maintain Patent Owner's confidentiality designation.

Patent Owner states that Exhibit 2029 is a confidential agreement with DENSO Corporation that includes a confidentiality provision. *Id.* The existence of the agreement with DENSO is public, as Patent Owner reveals that information in its non-confidential motion. *Id.* Patent Owner has shown good cause that Exhibit 2029 should be treated as confidential in this proceeding.

Exhibits 2004 is a confidential version of the Declaration of inventor Isaac Levanon and references confidential information concerning licensing activities, such as those involving DENSO. A non-confidential version was filed as Exhibit 2072. For the reasons discussed above relative to Exhibit 2029, we are persuaded that Patent Owner has shown good cause that Exhibit 2004 should be treated as confidential in this proceeding.

We do not cite Exhibit 2022 or Exhibit 2029 or the confidential portions of Exhibit 2004 in our Final Written Decision. As discussed above, one option is to deny Patent Owner's motion and allow Patent Owner to move to expunge the documents. However, we maintain the confidentiality of the documents and leave

the decision to move to expunge documents not relied upon in the Final Written Decision up to Patent Owner.

In its Second Motion to Seal, Patent Owner moves to seal the confidential version of its Opposition to Petitioner's Motion to Exclude (Paper 49)¹ on the basis that it references Exhibits 2022 and 2029 and portions of Exhibit 2004. Paper 48. We maintain the confidentiality of Paper 49 for the same reasons as those discussed above relative to Exhibits 2022 and 2029.

In its Third Motion to Seal, Patent Owner moves to seal the confidential version of its Reply to Petitioner's Opposition to Patent Owner's Motion to Seal (Paper 55)² and Exhibit 2082, on the basis that Paper 55 cites Exhibit 2029, and Exhibit 2082 is related and subject to the same confidentiality obligation. Paper 54. We do not cite Exhibit 2082 in our Final Written Decision, but agree that Patent Owner has shown good cause that Paper 55 and Exhibit 2082 should be maintained as confidential for the reasons discussed with respect to Exhibit 2029.

ORDER

In consideration of the above it is

ORDERED that the Stipulated Protective Order (Paper 15, Exhibit A) is ENTERED;

FURTHER ORDERED that Petitioner's Motion to Seal Exhibits 2012, 2013, 2014, 2015, and 2034 is GRANTED; and

FURTHER ORDERED that Patent Owner's Motions to Seal Papers 16, 49, and 55, and Exhibits 2004, 2022, 2029, and 2082 are GRANTED.

¹ Patent Owner has filed a redacted public version of its Opposition to Petitioner's Motion to Exclude. Paper 50.

² Patent Owner has filed a redacted public version of its Reply to Petitioner's Opposition to Patent Owner's Motion to Seal. Paper 56.

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