

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

GEOTAB INC., AND
TV MANAGEMENT INC., D/B/A GPS NORTH AMERICA
Petitioners,

v.

PERDIEM CO., LLC.

Patent Owner

Case IPR2016-01063

U.S. Patent 8,717,166

PETITIONERS' MOTION TO SEAL

I. Introduction

Pursuant to 37 CFR §§ 42.14 and 42.54, Petitioners move for entry of the Default Protective Order and to seal Exhibits 1014, 1015, and 1016. Redacted versions of these exhibits have been filed publicly.

II. Good Cause Exists to Seal Exhibits 1014, 1015, and 1016

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. The party asserting confidentiality must explain why the information sought to be sealed constitutes confidential information. *Medtronic, Inc., v. Robert Bosch Healthcare Systems, Inc.*, IPR2014-00488, paper 60, p.3 (PTAB 2015).

1. Ex. 1014 is a declaration by William Steckel which includes confirmations for the transfer of funds (Exs. A & C). Petitioners filed Ex. 1014 to be viewable to the Board and Parties only. Ex. 1014 includes confidential financial information such as account numbers and amounts of funds. See Exs. A & C attached to Ex. 1014. This is the kind of information that is deemed confidential and protectable. *See* Office Trial and Practice Guide, 77 Fed. Reg. 48760 (Aug. 14, 2012) (stating that Federal Rule of Civil Procedure 26(c)(1)(G) “provides for protective orders for trade secret or other confidential research, development, or commercial information.”).

2. Ex. 1015 is a declaration by Steven Hill which includes wire transfer confirmations Ex. A. As stated above, account numbers and amounts of funds are

pieces of confidential financial information. Petitioners filed Ex. 1015 to be viewable to the Board and Parties only.

3. Ex. 1016 is a declaration by Michael Femal which includes a Joint Defense Agreement (Ex. A) related to the co-pending litigation and confirmations for transfers of funds (Ex. B). Petitioners filed Ex. 1016 to be viewable to the Board and Petitioners only. Ex. 1016 includes confidential financial information such as account numbers and amounts of funds. See Ex. B attached to Ex. 1016. In addition, the entirety of the Joint Defense Agreement is privileged work product the contents of which necessarily relate to legal strategy among multiple parties which are each defendants in the co-pending patent infringement lawsuits asserted by PerDiem involving the same patents which are subject to the *inter partes* review proceedings at issue. See Ex. A attached to Ex. 1016. See, e.g., *AMEC Civil, LLC v. DMJM Harris, Inc.*, 2008 WL 8171059, at *4 (D.N.J. July 11, 2008); *R.F.M.A.S., Inc. v. So*, 2008 WL 465113, at *1 (S.D.N.Y. Feb. 15, 2008) (“As a general matter, a joint-defense agreement fits within the broad definition of work product, which embraces documents prepared because of the prospect of litigation.”) (citing *United States v. Adlman*, 134 F.3d 1194, 1202-03 (2d Cir. 1998); *A.I. Credit Corp. v. Providence Washington Ins. Co., Inc.*, 1997 WL 231127, at *4 (S.D.N.Y. May 7, 1997).

III. Certification of Conference with Opposing Party

Petitioners attempted in good faith to confer with Patent Owner regarding the filing of this Motion to Seal and Default Protective Order. Petitioners contacted Patent Owner via email on October 31, 2016 to discuss the confidentiality of the evidence and the Default Protective Order. Patent Owner did not respond.

IV. Conclusion

Petitioners respectfully request entry of the Default Protective Order and that the Board grant this motion to file under seal.

Respectfully submitted,

Date: November 1, 2016

/Vivek Ganti/

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing paper and supporting materials were served via electronic mail on November 1, 2016, as agreed to by the parties pursuant to 37 C.F.R. § 42.105, in its entirety on the following:

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