

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TV MANAGEMENT, INC., D/B/A GPS NORTH AMERICA,
Petitioner,

v.

PERDIEMCO LLC,
Patent Owner.

Cases¹

IPR2016-01061 (Patent 8,223,012)

IPR2016-01064 (Patent 9,003,499)

IPR2016-01278 (Patent 9,071,931)

Before WILLIAM V. SAINDON, CARL M. DEFRANCO, and
AMBER L. HAGY, *Administrative Patent Judges*.

HAGY, *Administrative Patent Judge*.

ORDER

Patent Owner's Motions to Seal
37 C.F.R. §§ 42.14

¹ This Order addresses issues that are substantially similar in the cases. We exercise our discretion to issue one order to be filed in each case.

IPR2016-01061 (Patent 8,223,012)
IPR2016-01064 (Patent 9,003,499)
IPR2016-01278 (Patent 9,071,931)

A. Patent Owner's Motions to Seal

On March 10, 2017, Patent Owner filed a (corrected) non-public version of Patent Owner's Response in IPR2016-01061 (Paper 36) and IPR2016-01064 (Paper 34), as well as non-public versions of a supporting declaration of counsel (Exhibit 2012). Similarly, on March 20, 2017, Patent Owner filed a non-public version of Patent Owner's Response in IPR2016-01278 (Paper 30) as well as a non-public version of a supporting declaration of counsel (Exhibit 2011). Patent Owner also filed, pursuant to 37 C.F.R. § 42.14, a Motion to Seal in each proceeding requesting sealing of the non-public version of Patent Owner's Response as well as the non-public version of the supporting declaration of counsel. IPR2016-01061 (Paper 31); IPR2016-01064 (Paper 29); IPR2016-01278 (Paper 31). In the first two proceedings, Patent Owner stated "Petitioner has indicated that it does not believe it will oppose but will take a final position after reviewing this motion and Patent Owner's response papers as filed." IPR2016-01061, Paper 31 at 1; IPR2016-01064, Paper 29 at 1. In the last proceeding, Patent Owner stated "Petitioner has indicated it does not expect to oppose this motion." IPR2016-01278, Paper 31 at 1. Petitioner has not submitted an opposition to Petitioner's motions to seal these papers in any of these proceedings.

B. Analysis

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because these proceedings determine the patentability of claims in issued patents and, therefore, affect the rights of the public. Under 35 U.S.C. § 326(a)(1) and 37

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C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; a party, however, may file a concurrent motion to seal, and the information at issue is sealed pending the outcome of the motion. It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7); *see Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. The party moving to seal bears the burden of proof of showing entitlement to the requested relief, and establishing that information sought to be sealed is confidential information. 37 C.F.R. § 42.20(c).

Patent Owner represents that “Patent Owner’s Response to Petition and the Whitehurst Declaration contain Patent Owner’s confidential licensing information, including the confidential dollar value of Patent Owner’s licenses. This information is not publicly known and should remain confidential.” Patent Owner’s Mot. to Seal 1.

We agree that the non-public version of Patent Owner’s Response and the non-public version of the supporting declaration of counsel, on their face, appear to contain confidential business information in terms of the dollar value of license agreements. We, therefore, are persuaded that Patent Owner shows good cause for sealing, in each proceeding, the non-public version of Patent Owner’s Response and the non-public version of the supporting declaration of counsel. Accordingly, we grant Patent Owner’s Motions to Seal in each proceeding.

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The parties are advised that, according to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012) (“Trial Practice Guide”):

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.

IT IS:

ORDERED that Patent Owner’s Motions to Seal are *granted*. The non-public versions of Patent Owner’s Response shall be sealed in each case (IPR2016-01061 (Paper 36); IPR2016-01064 (Paper 34); IPR2016-01278 (Paper 30)), along with the non-public versions of the supporting declaration of counsel (Exhibit 2011 in IPR2016-01278 and Exhibit 2012 in IPR2016-01061 and IPR2016-01064).

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