

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DEXCOM, INC.,
Petitioner,

v.

WAVEFORM TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2016-01679
Patent 7,146,202 B2

Before ERICA A. FRANKLIN, JON B. TORNQUIST, and
ELIZABETH M. ROESEL, *Administrative Patent Judges*.

ROESEL, *Administrative Patent Judge*.

ORDER
Granting Unopposed Motions to Expunge
37 C.F.R. § 42.5

Petitioner moves for an order expunging Exhibits 1030–32, 2027, 2039, 2041–48, 2051–53, 2055, 2060–61, 2076, and 2082–83 and Papers 28 and 36, all of which were filed on the confidential record. Paper 55. Patent Owner moves for an order expunging Exhibit 1041 and replacing it with a redacted version prepared by Patent Owner and filed by Petitioner. Paper 56; Ex. 1041 (redacted version filed June 6, 2019).

Exhibits 1030–32 and 1041 and Paper 36 (Petitioner’s Reply) were the subject of Petitioner’s Motion to Seal (Paper 38), and the remaining exhibits and Paper 28 (Patent Owner’s Response) were the subject of Patent Owner’s motion to seal (Paper 30) and Petitioner’s response supporting that motion (Paper 32). Redacted versions of Exhibit 2027 and Papers 28 and 36 were filed on the public record. Ex. 2027 (public version); Papers 29, 37.

Our rules provide that, after final judgment in a trial, a party may file a motion to expunge confidential information from the record. 37 C.F.R. § 42.56. Petitioner represents that the documents Petitioner seeks to expunge disclose confidential technical and business information, the majority of which was associated with Patent Owner’s arguments regarding secondary considerations of nonobviousness. Paper 55, 2. Petitioner further represents that Patent Owner does not oppose Petitioner’s motion to expunge. *Id.*

Patent Owner represents that Exhibit 1041 is a transcript of the deposition of its employee, Ellen Anderson, disclosing confidential technical and business information relating to the development, design, manufacture, testing, and regulatory approval of Patent Owner’s glucose monitoring products. Paper 56, 2, 5. Patent Owner further represents that Petitioner does not oppose Patent Owner’s motion to expunge Exhibit 1041. *Id.* at 2.

The information contained in the exhibits and papers that Petitioner seeks to expunge was not relied upon by us in rendering any decision. *See* Paper 53 (Final Written Decision), 2 n.2 (“We rely on the public, redacted versions of Patent Owner’s Response and Petitioner’s Reply.”); *id.* at 3 n.3 (“We rely on the public, redacted version of Exhibit 2027.”); *id.* at 31, 48 (concluding that Petitioner had not met its burden of proof to show obviousness, even without considering Patent Owner’s evidence of secondary considerations of non-obviousness).

Patent Owner represents that the only submissions relying on Exhibit 1041 were the parties’ briefs on Petitioner’s motion to exclude evidence (Papers 41, 46) and that Patent Owner does not seek to expunge the portions of Exhibit 1041 that were relied upon in those briefs. Paper 56, 2. We dismissed Petitioner’s motion to exclude as moot without discussing or relying on Exhibit 1041. Paper 53, 48–49.

The Board’s judgment was affirmed by the United States Court of Appeals for the Federal Circuit on April 3, 2019, and the Court’s mandate issued on May 10, 2019.

In view of the foregoing, we determine that Petitioner has provided good cause for granting its motion (Paper 55) and that Patent Owner has provided good cause for granting its motion (Paper 56).

IPR2016-01679
Patent 7,146,202 B2

Accordingly, it is hereby:

ORDERED that Petitioner's motion to expunge Exhibits 1030–32, 2027, 2039, 2041–48, 2051–53, 2055, 2060–61, 2076, and 2082–83 and Papers 28 and 36, which have been filed on the confidential record, is *granted*;

FURTHER ORDERED that Patent Owner's motion to expunge and replace Exhibit 1041, which has been filed on the confidential record, is *granted*; and

FURTHER ORDERED that Exhibits 1030–32, 1041, 2027, 2039, 2041–48, 2051–53, 2055, 2060–61, 2076, and 2082–83 and Papers 28 and 36, which have been filed on the confidential record, shall be expunged.

IPR2016-01679
Patent 7,146,202 B2

FOR PETITIONER:

Matthew Johnson
David Cochran
Calvin Griffith
JONES DAY
mwjohnson@jonesday.com
dcochran@jonesday.com
cpgriffith@jonesday.com

FOR PATENT OWNER:

Scott Eads
Karri Bradley
Nicholas Aldrich, Jr.
Jason Wrubleski
SCHWABE, WILLIAMSON & WYATT, P.C.
seads@schwabe.com
kbradley@schwabe.com
naldrich@schwabe.com
jwrubleski@schwabe.com