

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELULAR CORPORATION,
Petitioner,

v.

PERDIEM CO., LLC.,
Patent Owner.

Cases¹

IPR2017-00968 (Patent 9,485,314 B2)

IPR2017-00969 (Patent 8,149,113 B2)

IPR2017-00973 (Patent 9,319,471 B2)

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

HAGY, *Administrative Patent Judge*.

ORDER

Patent Owner's Motion 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.

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IPR2017-00973 (Patent 9,319,471 B2)

A. *Patent Owner's Motion to Seal*

On June 29, 2017, pursuant to 37 C.F.R. § 42.14, Patent Owner filed a Motion to Seal requesting sealing of Exhibit 2013. Paper 8, 1 (“Patent Owner’s Mot. to Seal”).² Exhibit 2013 purports to be a “Settlement Agreement” that is marked “Confidential.” Ex. 2013. Patent Owner states “Petitioner has indicated that it does not oppose this motion.” Patent Owner’s Mot. to Seal 1.

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 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

² Identification of Exhibits and Papers herein, unless otherwise indicated, refer to those filed in IPR2017-00968. The corresponding Papers and Exhibits in the other two proceedings are: Paper 8 (IPR2017-00969), Ex. 2013; and Paper 8 (IPR2017-00973), Ex. 2013.

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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 filed Exhibit 2013 in support of its Preliminary Response to the Petition.³ Patent Owner represents that Exhibit 2013 is a “confidential settlement agreement” that “is not publicly known and should remain confidential.” Patent Owner’s Mot. to Seal 1.

We agree that Exhibit 2013, on its face, appears to contain confidential business information. Further, this exhibit is offered as evidence directed to an issue only tangentially related to the patentability of the patents at issue—namely, Patent Owner’s assertions regarding the context in which *inter partes* review was sought. We, therefore, are persuaded that Patent Owner shows good cause for sealing Exhibit 2013 in its entirety. Accordingly, we grant Patent Owner’s Motion to Seal.

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.

³ In IPR2017-00968, Paper 7. Similar papers exist in the other proceedings.

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IT IS:

ORDERED that Patent Owner's Motion to Seal is *granted* and Exhibit 2013 shall be sealed in each case.

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