

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HENDRICKSON USA L.L.C., GREAT DANE L.L.C., and
QUEST GLOBAL, INC.,
Petitioners,

v.

TRANS TECHNOLOGIES COMPANY,
Patent Owner.

Case IPR2017-01510
Patent 7,669,465 B2

Before KEN B. BARRETT, JEFFREY A. STEPHENS, and
GARTH D. BAER, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

ORDER
Granting Joint Motion to Expunge
Conduct of the Proceeding Regarding Final Written Decision
37 C.F.R. § 42.5

I. DISCUSSION

On December 3, 2018, we issued a Final Written Decision under seal in the above-referenced *inter partes* review to afford the parties an opportunity to identify any confidential information to which we may have referred in the Final Written Decision. Paper 58 (also referred to as the “Final Decision”). In the Final Decision, we granted the parties’ joint motions to seal, determining that good cause existed for portions of certain papers and exhibits to remain under seal until 45 days after resolution of appellate proceedings, or, if no appeal is taken, after the time for filing a notice of appeal has expired. Paper 58, 66. The time for appealing the Final Decision has expired, and neither party has appealed. The Final Decision notes that a motion to expunge the sealed version of documents may be filed, but the motion “must state whether the document sought to be expunged was referred to in the Final Written Decision and identify any specific portions of the document referred to in the Final Written Decision.” *Id.* at 66–67. Additional instructions were provided. *Id.* at 67.

On December 21, 2018, the parties filed a Joint Motion to Expunge, which seeks to expunge from the record Papers 42 and 51, and Exhibits 2011–2013, 2016–2019, and 2034. Paper 59 (“Motion”). We understand the Motion to seek to expunge only the sealed versions of the listed exhibits, as the Motion states that “each of the papers and exhibits sought to be expunged has a corresponding redacted version publicly available on PTAB’s e2e filing system.” *Id.* at 3. The Motion also states that the parties agree the Final Decision may be made publicly available without any redactions. *Id.* at 2.

We determine that it is appropriate to expunge the sealed versions of Exhibits 2011–2013 and 2016–2019. Exhibits 2012, 2013, 2017, and 2019 were not cited in the Final Decision. Some portions of Exhibits 2011, 2016, and 2018 cited in the Final Decision are not redacted in the publicly available versions of these exhibits. The portions of Exhibits 2011, 2016, and 2018 that are redacted and cited in the Final Decision are not necessary for understanding the basis of our decision on patentability.

We determine that it is also appropriate to expunge Papers 42 and 51 and the sealed version of Exhibit 2034. The sealed portions of Exhibit 2034 and Papers 42 and 51 relate primarily to the volume of sales of Hendrickson’s TIREMAAX® PRO and TIREMAAX® CP systems from 2008 to 2013, and also discuss cost and pricing information for these products. *See* Motion 7–8. The Motion characterizes this information as “Hendrickson’s most confidential competitive and sensitive internal information” and “highly confidential.” *Id.* The parties argue “[t]he exact numbers cited are unnecessary either to Patent Owner’s general position or to the Board’s Final Written Decision, and the general public has no particular interest in Hendrickson’s exact product sales or profit margins.” *Id.* at 8. The parties also contend “the unredacted portions of Patent Owner’s Revised Response adequately support the portion of the Board’s Final Written Decision with regard to the relative sales and profitability of those two products” and “the Board has quoted in its decision non-confidential portions of the redacted pages.” *Id.*

The arguments in the Motion present a weak showing of any concrete harm that would result upon public disclosure of the sales and pricing information in Exhibit 2034 and Papers 42 and 51, especially considering

the age of this information. On the other hand, we agree with the parties that the portions of the redacted pages quoted in the Board's Final Decision provide the public with sufficient explanation of the basis of the decision. Thus, on balance, here we determine that public interest in the exact sales and pricing numbers in the redacted portions of Exhibit 2034 and Papers 42 and 51 is outweighed by Hendrickson's interest in maintaining the confidentiality of that information.

Paper 34 is an earlier version of Patent Owner's Response that was filed under seal. Although Paper 34 was superseded by the Revised Patent Owner's Response (Papers 41, 42), it was not expunged. Because Paper 34 contains essentially the same information that the Motion to Expunge asserts is confidential in Paper 42, we consider omission of Paper 34 from the Motion to be inadvertent. Paper 34 is appropriate to be expunged for the same reasons as Paper 42, and because Paper 42 supersedes Paper 34.

II. ORDER

For the reasons given, it is

ORDERED that the Final Written Decision be issued in its entirety as a public document;

FURTHER ORDERED that the Joint Motion to Expunge is *granted*;

FURTHER ORDERED that only sealed versions of Exhibits 2011–2013, 2016–2019, and 2034 are *expunged*;

FURTHER ORDERED that Papers 34, 42, and 51 are *expunged*.

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