

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION,
Petitioner,

v.

SIEMENS MOBILITY, INC.,
Patent Owner.

Case IPR2017-01669 (Patent 6,824,110 B2)
Case IPR2017-02044 (Patent 6,609,049 B1)¹

Before KRISTEN L. DROESCH, MEREDITH C. PETRAVICK, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

DROESCH, *Administrative Patent Judge*.

DECISION

Patent Owner's Motions to Seal Exhibit 2010
Petitioner's Motions to Seal Reply
Petitioner's Motions to Seal Motion to Exclude
Patent Owner's Motions to Seal Opposition to Motion to Exclude
37 C.F.R. §§ 42.14, 42.54

¹ This Order applies to each of the above-listed proceedings. We exercise our discretion to issue one Order to be filed in each proceeding. The parties are not authorized to use this heading style in any subsequent papers.

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Patent Owner filed a Motion to Seal Exhibit 2010 in IPR2017-01669 (“1669 IPR”), and an identical Motion to Seal Exhibit 2010 in IPR2017-02044 (“2044 IPR”). 1669 IPR, Paper 18; 2044 IPR, Paper 21 (“Mot. to Seal Ex. 2010”).² Along with its Motions, Patent Owner indicated that Petitioner and Patent Owner stipulate to use the “standing protective order” set forth in the OFFICE PATENT TRIAL PRACTICE GUIDE 77 Fed. Reg. 48,756, 48,769 (Aug. 14, 2012), and submitted a copy of the “Stipulated Protective Order” as Exhibit 2015 in each IPR. *See id.* at 1. In subsequent motions to seal filed by the parties, “Patent Owner respectfully requests entry of the previously filed Default Protective Order (accompanying Patent Owner’s Motion to Seal Exhibit 2010, Paper 18).” 1669 IPR, Paper 25, 4, Paper 32, 3–4, Paper 35, 1; 2044 IPR, Paper 28, 4, Paper 35, 3–4, Paper 38, 1.

Related to Exhibit 2010, Petitioner filed a Motion to Seal Petitioner’s Reply in the 1669 IPR (1669 IPR, Paper 26, Paper 43 (replacement)), and an identical Motion to Seal Petitioner’s Reply in the 2044 IPR (2044 IPR, Paper 29, Paper 46 (replacement)). 1669 IPR, Paper 25; 2044 IPR, Paper 28 (“Mot. to Seal Reply”).³ Petitioner also filed a redacted version of its Reply in each IPR (1669 IPR, Paper 24, Paper 42 (replacement); 2044 IPR, Paper 27, Paper 45 (replacement)), to be available to the public.

Also related to Exhibit 2010, Petitioner filed a Motion to Seal Petitioner’s Motion to Exclude Exhibits 2010 and 2011 in the 1669 IPR (1669 IPR, Paper 28), and an identical Motion to Seal Petitioner’s Motion to Exclude Exhibits 2010 and 2011 in the 2044 IPR (2044 IPR, Paper 31).

² All references to “Mot. to Seal Ex. 2010” are to IPR2017-01669, Paper 18.

³ All references to “Mot. to Seal Reply” are to IPR2017-01669, Paper 25.

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1669 IPR, Paper 32; 2044 IPR, Paper 35 (“Mot. to Seal MTE Ex. 2010”).⁴

Petitioner filed a redacted version of its Motion to Exclude Exhibits 2010 and 2011 in each IPR (1669 IPR, Paper 31; 2044 IPR, Paper 34), to be available to the public.

Patent Owner filed a Motion to Seal Patent Owner’s Opposition to Petitioner’s Motion to Exclude Exhibits 2010 and 2011 in the 1669 IPR (1669 IPR, Paper 36), and an identical Motion to Seal Patent Owner’s Opposition Petitioner’s Motion to Exclude Exhibits 2010 and 2011 in the 2044 IPR (2044 IPR, Paper 39). 1669 IPR, Paper 35; 2044 IPR, Paper 38 (“Mot. to Seal Opp. MTE Ex. 2010”).⁵ Patent Owner filed a redacted version of its Motion to Seal Patent Owner’s Opposition in each IPR (1669 IPR, Paper 37; 2044 IPR, Paper 40), to be available to the public.

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54. There is a strong public policy that favors making information filed in an *inter partes* review open to the public. *See Garmin Int’l v. Cuozzo Speed Techs., LLC*, Case IPR2012-00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34) (discussing the standards applied to motions to seal). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). The burden includes showing why the information is confidential. *See Garmin*, slip op. at 3.

Patent Owner asserts good cause exists for sealing Exhibit 2010 because it is a confidential license agreement setting forth the confidentiality obligations of the parties in the document itself. Mot. to Seal Ex. 2010 1

⁴ All references to “Mot. to Seal MTE Ex. 2010” are to IPR2017-01669, Paper 32.

⁵ All references to “Mot. to Seal Opp. MTE Ex. 2010” are to IPR2017-01669, Paper 35.

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(citing Ex. 2010, 6). Patent Owner asserts that it believes it is obligated to maintain confidentiality of this license agreement as Protective Order

Material in accordance with the Stipulated Protective Order. *See id.*

According to Patent Owner, both Patent Owner and the licensee treat this agreement as confidential because the license agreement terms could have significant value to competitors. *See id.* Patent Owner contends that if the license agreement was made public, both Patent Owner and the licensee “would be irreparably harmed [because] such disclosure would provide the public at-large with direct insight into the parties’ closely-held business terms.” *See id.* at 1–2. Petitioner did not file an opposition to Patent Owner’s Motions to Seal Exhibit 2010.

We have considered Patent Owner’s Motions to Seal Exhibit 2010 and the information contained in Exhibit 2010. We are persuaded Patent Owner has demonstrated sufficiently that Exhibit 2010 includes confidential information that should be sealed. Accordingly, Patent Owner’s Motions to Seal Exhibit 2010 are *granted*.

As to Petitioner’s Motions to Seal Petitioner’s Reply, Petitioner asserts that “Patent Owner has requested the redaction of three sentences in Petitioner’s Reply, because each of those sentences either quote from, or otherwise describe and/or characterize the license terms that constitute confidential information in the license document.” Mot. to Seal Reply 1. According to Petitioner, “[i]f other third parties were able to access such information, Patent Owner submits that it and the non-party licensee would be irreparably harmed as such disclosure would provide the public at-large with direct insight into the parties’ closely-held business terms,” such as providing third parties with “an unfair business advantage with respect to future licensing negotiations concerning this patent, or others maintained by

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Patent Owner.” *Id.* at 1–2. Petitioner further contends, “Patent Owner does not believe that it is proper for Petitioner to publicize the contents of its confidential document that was filed subject to an unopposed motion to seal in this IPR.” *Id.* at 2.

Petitioner argues that, although it did not oppose Patent Owner’s Motion to Seal Exhibit 2010, it opposes the redaction of the three sentences of its Reply because these sentences does not include confidential information. *See* Mot. to Seal Reply 2–3. According to Petitioner, the first sentence includes a quoted portion of text and a time frame, but the time frame is not the term of the license, but is “a time frame for which Patent Owner’s predecessor-in-interest was seeking business from a third-party.” *Id.* at 2–3. Petitioner also asserts that “this information is not third-party information, it wholly belongs to the licensor, whom Patent Owner has subsequently acquired and is therefore waivable by Patent Owner to the extent it is even confidential.” *Id.* at 3. As to the second sentence, Petitioner contends it is not confidential information because it is only Petitioner’s characterization of what Exhibit 2010 does not constitute. *See id.* Lastly, Petitioner contends the third sentence is not confidential information as it does not disclose the underlying value of the license agreement, but instead is Petitioner’s characterizations of the value of the license to the parties and the value of the license to the industry. *See id.*

Regarding Petitioner’s Motions to Seal Petitioner’s Motion to Exclude Exhibits 2010 and 2011, Petitioner asserts that “Patent Owner has requested the redaction of certain portions of four paragraphs in Petitioner’s MTE, because each of those portions either quote from, or otherwise describe and/or characterize, the license terms that constitute confidential information in the license document.” Mot. to Seal MTE Ex. 2010 1. Petitioner restates

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