

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 2017 and
Submission of Supplemental Information
Petitioner's Motions to Seal Response to Supplemental Information
Petitioner's Motions to Seal Motion to Exclude Ex. 2017
Patent Owner's Motions to Seal Opposition to Motion to Exclude Ex. 2017
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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IPR2017-02044 (Patent 6,609,049 B1)

Patent Owner filed a Motion to Seal Exhibit 2017 and Patent Owner's Submission of Supplemental Information in IPR2017-01669 ("1669 IPR"), and an identical Motion to Seal Exhibit 2017 and Patent Owner's Submission of Supplemental Information in IPR2017-02044 ("2044 IPR"). 1669 IPR, Paper 39; 2044 IPR, Paper 42 ("Motion to Seal Ex. 2017 & Supp. Info.")² Patent Owner also filed a redacted version of its Submission of Supplemental Information (1669 IPR, Paper 41; 2044 IPR, Paper 44) and a redacted version of Exhibit 2017 in each IPR, to be available to the public.

Related to Exhibit 2017 and the Submission of Supplemental Information, Petitioner filed a Motion to Seal Petitioner's Response to Patent Owner's Supplemental Information in the 1669 IPR (1669 IPR, Paper 47), and an identical Motion to Seal Petitioner's Response to Patent Owner's Supplemental Information in the 2044 IPR (2044 IPR, Paper 50). 1669 IPR, Paper 46; 2044 IPR, Paper 49 ("Mot. to Seal Resp. Supp. Info.")³ Petitioner also filed a redacted version of its Response in each IPR (1669 IPR, Paper 48; 2044 IPR, Paper 51), to be available to the public.

Also related to Exhibit 2017 and the Submission of Supplemental Information, Petitioner filed a Motion to Seal Petitioner's Motion to Exclude Exhibit 2017 in the 1669 IPR (1669 IPR, Paper 52), and an identical Motion to Seal Petitioner's Motion to Exclude Exhibit 2017 in the 2044 IPR (2044 IPR, Paper 55). 1669 IPR, Paper 51; 2044 IPR, Paper 54 ("Mot. to Seal

² All references to "Mot. to Seal Ex. 2017 & Supp. Info." are to IPR2017-01669, Paper 39.

³ All references to "Mot. to Seal Resp. Supp. Info" are to IPR2017-01669, Paper 46.

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MTE Ex. 2017”).⁴ Petitioner filed a redacted version of its Motion to Exclude Ex. 2017 in each IPR (1669 IPR, Paper 53; 2044 IPR, Paper 56), to be available to the public.

Patent Owner filed a Motion to Seal Patent Owner’s Opposition to Petitioner’s Motion to Exclude Exhibit 2017 in the 1669 IPR (1669 IPR, Paper 55), and an identical Motion to Seal Patent Owner’s Opposition to Petitioner’s Motion to Exclude Exhibit 2017 in the 2044 IPR (2044 IPR, Paper 58). 1669 IPR, Paper 54; 2044 IPR, Paper 57 (“Mot. to Seal Opp. MTE Ex. 2017”).⁵ Patent Owner filed a redacted version of its Motion to Seal Patent Owner’s Opposition in each IPR (1669 IPR, Paper 56; 2044 IPR, Paper 59), 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 2017 because it is a confidential license agreement between Patent Owner and Norfolk Southern Corporation, which sets forth the confidentiality obligations of the parties in the document itself. Motion to Seal Ex. 2017 &

⁴ All references to “Mot. to Seal MTE Ex. 2017” are to IPR2017-01669, Paper 51.

⁵ All references to “Mot. to Seal Opp. MTE Ex. 2017” are to IPR2017-01669, Paper 54.

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Supp. Info. 1 (citing Ex. 2017, 5 ¶ 8). 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 Norfolk Southern treat this agreement as confidential because the license agreement terms could have significant value to competitors. *See id.* Patent Owner asserts that the license agreement contains Patent Owner’s and Norfolk Southern’s confidential information, and should be subject to the protections of the Board’s protective order. *See id.* at 1–2. 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 2. Patent Owner represents that it “has received permission from Norfolk Southern to use the license with the financial terms redacted in the IPR on the condition that it is treated as confidential pursuant to the Board’s protective order.” *See id.* Patent Owner also asserts good cause exists for sealing its Submission of Supplemental Information because the redacted text includes a four word quotation from Ex. 2017, which constitutes confidential information of Patent Owner and Norfolk Southern. *See id.* (citing Ex. 2017, 5 ¶ 8). Petitioner did not file an opposition to Patent Owner’s Motion to Seal Exhibit 2017 and Patent Owner’s Submission of Supplemental Information.

We have considered Patent Owner’s Motions and the information contained in Exhibit 2017 and Patent Owner’s Submissions of Supplemental Information. We are persuaded Patent Owner has demonstrated sufficiently that Exhibit 2017 and Patent Owner’s Submission of Supplemental Information include confidential information that should be sealed.

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Accordingly, Patent Owner's Motions to Seal Exhibit 2017 and Patent Owner's Submission of Supplemental Information are *granted*.

As to Petitioner's Motions to Seal Petitioner's Response to Patent Owner's Submission of Supplemental Information, Petitioner asserts that its "Response extensively discusses Exhibit 2017 which Patent Owner has indicated is "a confidential license agreement" that "contains Patent Owner's confidential information, and the confidential information of the nonparty licensee [Norfolk Southern] (NS), and should be subject to the protections of the Board's protective order." Mot. to Seal Resp. Supp. Info. 2 (citing Motion to Seal Ex. 2017 & Supp. Info.). According to Petitioner, "Patent Owner contends that Petitioner's Response contains information that is confidential and subject to the previously-filed Default Protective Order (Exhibit 2015) for the reasons set forth in its Motion to Seal Exhibit 2017 and Patent Owner's Submission of Supplemental Information." *See id.* (citing Motion to Seal Ex. 2017 & Supp. Info.). As to Petitioner's Motions to Seal Petitioner's Motion to Exclude Exhibit 2017, Petitioner reiterates its reasons that the information is confidential set forth in its Motion to Seal Petitioner's Response to Patent Owner's Submission of Supplemental Information. *Compare* Mot. to Seal MTE Ex. 2017 1–2, *with* Motion to Seal Ex. 2017 & Supp. Info. 1–2. Petitioner represents that Patent Owner does not oppose its motions. *See* Motion to Seal Ex. 2017 & Supp. Info. 1; Mot. to Seal MTE Ex. 2017 1.

We have considered Petitioner's Motions to Seal Petitioner's Response to Patent Owner's Submission of Supplemental Information and Petitioner's Motions to Seal Petitioner's Motion to Exclude Exhibit 2017, and the information therein. We are persuaded that Petitioner's Response to Patent Owner's Submission of Supplemental Information and Petitioner's

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