

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROPPANT EXPRESS INVESTMENTS, LLC,
PROPPANT EXPRESS SOLUTIONS, LLC,
Petitioner,

v.

OREN TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2017-01917
Patent 9,296,518 B2

Before MITCHELL G. WEATHERLY, KEVIN W. CHERRY, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding; Parties' Motions to Seal
37 C.F.R. § 42.5

The parties have filed a dozen motions to seal in this proceeding. *See* Papers 32, 35, 48, 51, 52, 59, 65, 69, 72, 75, 77, and 98.¹ The first eleven of those motions accompany various filings in this proceeding. The twelfth motion is a Joint Motion to Seal filed by the parties to replace a number of the pending motions and clarify what actually needs to be sealed. *See* Paper 98 (“Joint Motion” or “Joint Mot.”).

In the Joint Motion, the parties request that we maintain the seal on the Patent Owner’s Response (Paper 31), Supplemental Patent Owner Response (Paper 40), Petitioner’s Reply (Paper 47), Patent Owner’s Sur-Reply (Paper 66), Transcript of the November 19, 2018 Call (Paper 70), Petitioner’s Motion to Strike (Paper 71), Petitioner’s Oral Hearing Demonstratives (Paper 76), Patent Owner’s Oral Hearing Demonstratives (Ex. 2096), and Exhibits 1059, 1085, 1091–1094, 1096, 1114, 2054–2066, 2075, 2079, 2081, and 2082. Joint Mot. 1. The parties also informed us that they do not wish to maintain the seal on Exhibits 1082–1084, 1097, 2073, 2080, 2087, and 2088, Patent Owner’s Motion to Terminate (Paper 53), and Petitioner’s Opposition to Motion to Terminate (Paper 60). *Id.*

Given that the Joint Motion to Seal addresses papers and exhibits that were previously addressed, some of the prior motions to seal that sought to seal those same papers have been entirely superseded by the new Joint Motion to Seal. Therefore, those superseded motions to seal are now moot.

¹ Papers 49 and 50 are also labeled as motions to seal on the docket, but they are both copies of Exhibit 2085 (which is a redacted version of Exhibit 2049).

Accordingly, we dismiss the motions to seal reflected in Papers 65, 69, 75, and 77 as moot.

As we mentioned above, the parties have also informed us that certain exhibits should not be maintained under seal. Joint Mot. 1. Two of the previously filed motions to seal—Papers 52 and 59—address only exhibits and papers that are no longer to be maintained under seal—Papers 53 and 60 and Exhibits 2087, 2088, and 1097. Accordingly, we deny the motions to seal reflected in Papers 52 and 59, as the parties no longer seek to seal those papers and exhibits.

In addition, two of the motions to seal address exhibits that are now addressed in the Joint Motion to Seal and include exhibits that the parties no longer seek to maintain under seal. *See* Papers 35 and 48. Accordingly, the motions to seal at Papers 35 and 48 are denied-in-part as to Exhibits 2080 and 1082, and dismissed-in-part as moot as to the remaining papers and exhibits.

This leaves the following motions to seal pending before us: (1) the Joint Motion to Seal, (2) Paper 32 (“First Motion to Seal” or “First Mot.”), (3) Paper 51 (“Second Motion to Seal,” or “Second Mot.”), and (4) Paper 72 (“Third Motion to Seal,” or “Third Mot.”). We consider these remaining four motions below.

“There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, Case IPR2012–00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54. That standard includes showing that the

information addressed in the motion to seal is truly confidential, and that such confidentiality outweighs the strong public interest in having the record open to the public. *See Garmin*, slip op. at 2–3.

The moving party bears the burden of showing that the relief requested should be granted, and establishing that the information sought to be sealed is confidential information. 37 C.F.R. § 42.20(c).

In the First Motion to Seal, Patent Owner seeks to seal the Patent Owner Response (Paper 31) and Exhibit 2071. *See* First Mot. 2. The parties also seek to seal the Patent Owner Response in the later-filed Joint Motion to Seal. Joint. Mot. 1. Thus, the portion of the First Motion to Seal relating to the Patent Owner Response is moot. However, no other motion to seal addresses Exhibit 2071. We have reviewed Patent Owner’s contentions in the First Motion to Seal, and agree with Patent Owner that harm could result to Patent Owner if the confidential financial information contained in Exhibit 2071 were released. First Mot. 2–3. Accordingly, we agree with Patent Owner that good cause exists to seal Exhibit 2071. Thus, we grant-in-part the First Motion to Seal as it relates to Exhibit 2071 and dismiss-in-part the First Motion to Seal as it relates to the Patent Owner Response.

In the Second Motion to Seal, Patent Owner seeks to seal an unredacted copy of Exhibit 2049—the Declaration of Fred Smith—because it contains confidential, proprietary information about the product manufactured by Patent Owner’s licensee, SandBox Logistics, LLC. Second Mot. 1–2. Patent Owner has also filed a redacted copy of Exhibit 2049 as Exhibit 2085. We have reviewed Patent Owner’s contentions and agree that

Patent Owner has shown good cause to seal Exhibit 2049. Accordingly, we grant the Second Motion to Seal.

In the Third Motion to Seal, Patent Owner seeks to seal Patent Owner's Opposition to Petitioner's Motion to Strike ("Patent Owner's Opposition," Paper 73) and Exhibit 2095, because they contain confidential commercial financial information, including revenue. Third Mot. 1. Patent Owner has filed a redacted version of Patent Owner's Opposition as Paper 74. We have reviewed Patent Owner's contentions and agree that Patent Owner has shown good cause to seal Patent Owner's Opposition and Exhibit 2095. Third Mot. 2–4. Accordingly, we grant the Third Motion to Seal.

As we detailed above, in the Joint Motion, the parties request that we maintain the seal on the Patent Owner's Response (Paper 31), Supplemental Patent Owner Response (Paper 40), Petitioner's Reply (Paper 47), Patent Owner's Sur-Reply (Paper 66), Transcript of the November 19, 2018, Call (Paper 70), Petitioner's Motion to Strike (Paper 71), Petitioner's Oral Hearing Demonstratives (Paper 76), Patent Owner's Oral Hearing Demonstratives (Ex. 2096), and Exhibits 1059, 1085, 1091–1094, 1096, 1114, 2054–2066, 2075, 2079, 2081, and 2082. Joint Mot. 1. We have reviewed the parties' contentions in the Joint Motion to Seal, and agree with the parties that harm could result if the confidential information contained in papers and exhibits sought to be sealed was released. Joint Mot. 2–7. The parties have also filed redacted copies of these papers and exhibits. *See* Papers 89–92 and 95–97; Exs. 1115–1134 and 2099–2105. Accordingly, we

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