
From: Camacho, Jesse (SHB) <JCAMACHO@shb.com>
Sent: Friday, May 25, 2018 7:10 AM
To: Guske, Sarah
Cc: TeleSignIPR; DL Twilio TeleSign DCT; Carter, Thomas; Soboleva, Larissa
Subject: RE: TeleSign v. Twilio--Case Nos. IPR2017-001976, -001977
Attachments: 376 Patent - Motion for Entry of Protective Order_Active_38010883_1.DOCX

Sarah,

Argument added to the attached doc as you requested.

The change to “only those copies needed” was made because the original “reasonable number” was too ambiguous and is more consistent with the PO’s other “reasonably necessary” constraints.

Regarding filing the requested documents, even under seal, yes, we do object. And to be clear, we object to your using information from those documents in your motion and to you filing those documents as we have explained multiple times, including under the rationale of Jazz Pharms and similar cases: “The Court finds that, by referring to the fact that Jazz had already produced documents responsive to the IPR requests in connection with this litigation (i.e., inherently relying on the contents of those confidential documents as the basis for its point), and using that fact as part of its argument as to why Jazz should have to provide additional discovery in the IPR proceedings, Par and Amneal again violated the DCO.” *Jazz Pharms. Inc. v. Amneal Pharms. LLC*, 2016 U.S. Dist. LEXIS 61373, *7. See also rational in *Ericsson v. D-Link* 2013 WL 12171970, *1-*2 (E.D. Tex 2013): “Granting Ericsson’s request for relief from the Protective Order would allow Ericsson to circumvent this balance between IPR discovery and confidentiality. In essence, Ericsson would be able to use the Court’s broader Rule 26 “relevancy” standard for discovery, yet subject Dell and Toshiba to the PTAB’s narrower protections of confidentiality.”); *Errant Gene Therapeutics, LLC v. Sloan-Kettering Inst. for Cancer Research*, 2017 U.S. Dist. LEXIS 85962, *7-9, 2017 WL 2418742 (S.D.N.Y. June 5, 2017) (“SKI argues that use of protected information alone, even without disclosure, is a violation of the Protective Order. (Doc. No. 110. 5-6.) The Court agrees.”); *Lunareye, Inc. v. Gordon Howard Assocs.*, 78 F. Supp. 3d 671, 676, 2015 U.S. Dist. LEXIS 18927, *2-3, 11, 90 Fed. R. Serv. 3d (Callaghan) 1578 (E.D. Tex. Feb. 2, 2015) (granting sanctions).

Filing of the PO in the IPR does not obviate the PO violations that have or are about to occur and exposes TS to a greater risk that its confidential information might become public. These documents simply don’t relate to secondary considerations and are not inconsistent with our positions in the Petition, which also does not front secondary considerations. The documents are not over designated, and even if you truly thought they were, there is a procedure in place in the PO to be followed, which you have not, and per the PO, the designation stands. These documents describe internal happenings and resolutions of customer issues that are certainly not to be publicized. Even the mentioning or disclosure of employee names in connection with high-level issues stands to subject Twilio to harm, such as, for example, if other litigants or persons attempt to use that info for discovery, subpoenas, poaching, etc. regarding those issues or roles.

What you do from here is up to you. We’ve cautioned you, provided notice, explained why the docs are not relevant (they don’t show any copying or any other objective indicia), provided case law, discussed the issue with the board, and have a court order in place.

We continue to oppose your discovery motion and use of TeleSign’s information outside of the underlying litigations.

Jesse
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