

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELESIGN CORPORATION
Petitioner,

v.

TWILIO INC.
Petitioner

Case IPR2017-01977
Patent 8,755,376

**JOINT MOTION FOR ENTRY
OF PROTECTIVE ORDER**

I. Statement of Precise Relief Requested

Pursuant to 37 C.F.R. § 42.54(a) and the Board's May 24, 2018 Order Authorizing Motion for Discovery (Paper No. 17), Patent Owner and Petitioner move for entry of a protective order in the form appended hereto as Exhibit A.¹

II. Factual Background

On May 23, 2018, the Board and the parties conducted a telephonic hearing regarding Patent Owner's request to seek discovery. Petitioner asserts that the requested materials contain confidential information that requires protection beyond the Default Protective Order. On May 24, 2018, the Board issued an Order directing the parties to meet and confer on a mutually-agreeable protective order and to file a motion for entry of protective order by May 25, 2018. (Paper No. 17.)

The parties have met and conferred as directed by the Board and have agreed on the language modifying the Default Protective Order and now jointly move for entry of the modified protective order attached as Appendix A.

¹ A redline of the proposed Protective Order that shows changes to the PTAB's default protective order (published in Appendix B of the Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48769-71 (Aug. 14, 2012) (the "Default Protective Order"), is appended here as Appendix B.

III. Argument

The parties propose adding an additional tier of confidentiality for attorneys' eyes only information. (Compare Appx. A at ¶¶ 1-3, 5.B. and Appx. B at ¶¶ 1-2, 4.B.) The Board may add a tier of "attorneys' eyes only" confidentiality to ensure that confidential party information is not disclosed in a way that could result in putting the disclosing party at an unfair competitive disadvantage or give the receiving party an unfair competitive advantage. *See, e.g., Baker Hughes Inc. v. Lubrizol Specialty Prods.*, TPR2016-00734, Paper 40 (Jan. 6, 2017); *Daicel Corp. v. Celanese Int'l Corp.*, IPR2015-00170, Paper 70 (Jan 20, 2016); *Greene's Energy Grp., LLC, Inc. v. Oil States Energy Servs., LLC*, 1PR2014-00216, Paper 27 (Sept. 23, 2014); *see also, e.g., In re Deutsche Bank Trust Co. Americas*, 605 F.3d 1373, 1378 (Fed. Cir. 2010) ("The purpose of a protective order is to prevent inadvertent compromise of confidential information."). In this case, an "attorneys' eyes only" designation is appropriate because the parties are competitors and the additional confidentiality tier protects against disclosure of sensitive financial and technical information to employees of the parties. For the same reason—to protect against disclosure of competitively sensitive information—the parties propose adjustments to the definitions of people who may have access to certain protected information. (Compare Appx. A at ¶¶ 2.(A.), (B.), (E.) and Appx. B at ¶¶ 2.(A.), (B.), (E).)

The parties further agree to the addition of a provision that allows a party to submit mutually-agreeable redactions to confidential materials to redact sensitive information that is not relevant to the case. (Compare Appx. A at ¶ 5.A.(ii) and Appx. B at ¶ 4.A.(ii).) Petitioner contends that the modification is appropriate in this case because the mutually-agreeable redactions help reduce the risk of public disclosure of irrelevant confidential information if the document were to ultimately become public inadvertently or intentionally and because it helps clarify that such redactions are allowable notwithstanding the immediately proceeding provision that might otherwise be construed to limit redactions or construed to imply that non-redacted information is non-confidential.

The parties further agree to a provision that requires a receiving party to cooperate with a producing party who seeks to keep confidential information sealed in the event that the Board indicates that it intends to unseal the producing party's material. (Appx. A at ¶ 6.) The provision is meant to clarify the process by which a party can seek to keep sealed competitively sensitive information submitted in this case. Similarly, the parties agree to a modification to ¶ 4.A. of the Default Protective Order to delete the "*sua sponte*" language to accommodate the parties' proposed process set forth in Appx. A at ¶ 6.

Finally, the parties further agree to a provision to clarify the ability to make copies of information designated by another party under the Proposed Protective Order. Specifically, the parties agree to modify the language of the Default Protective Order that reads “a reasonable number of copies” to “only those copies needed for.” (Compare Appx. A at ¶ 4(D) and Appx. B at ¶ 3(D).) Petitioner contends that the modification is appropriate to clarify the scope of the provision.

IV. Certification of Conference with Opposing Party Pursuant to 37 C.F.R. § 42.54

Patent Owner, in good faith, met and conferred with Petitioner regarding the entry of the Proposed Protective Order and the motion to seal. Petitioner agrees to the entry of the Proposed Protective Order.

WHEREFORE, the parties respectfully request that the Board enter a Protective Order in the form appended hereto as Appendix A.

Date: May 25, 2018

Respectfully submitted,

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