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Paper 20
Entered: May 31, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELESIGN CORPORATION,
Petitioner,

v.

TWILIO INC.,
Patent Owner.

Case IPR2017-01976 (Patent 8,837,465 B2)
Case IPR2017-01977 (Patent 8,755,376 B2)[1]

Before ROBERT J. WEINSCHENK, KIMBERLY MCGRAW, and SCOTT C. MOORE, *Administrative Patent Judges*.

WEINSCHENK, *Administrative Patent Judge*.

ORDER
Denying Joint Motion for Entry of Protective Order
37 C.F.R. § 42.54

[1] This Order pertains to both of these cases. Therefore, we exercise our discretion to issue a single Order to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

I. INTRODUCTION

TeleSign Corporation ("Petitioner") and Twilio Inc. ("Patent Owner") filed a Joint Motion for Entry of Protective Order. Paper 17[2] ("Motion" or "Mot."). The parties request entry of a proposed Protective Order that differs from the Board's default Protective Order. *Id.* at 1. The parties submit a clean version of the proposed Protective Order as Appendix A to the Motion and a redline version of the proposed Protective Order as Appendix B to the Motion. *Id.* at Appx. A, Appx. B. For the reasons discussed below, the Motion is *denied* without prejudice.

II. ANALYSIS

After considering the Motion and the Appendices thereto, we determine that the parties have not shown sufficiently that the proposed modifications to Sections 4(A)(i), (ii) of the default Protective Order are warranted. First, Section 4(A)(i) of the default Protective Order states:

> A party may file documents or information with the Board under seal, together with a non-confidential description of the nature of the confidential information that is under seal and the reasons why the information is confidential and should not be made available to the public. The submission shall be treated as confidential and remain under seal, unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that the documents or information do not to qualify for confidential treatment.

Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,771 (Aug. 14, 2012). The parties propose deleting the phrase "or *sua sponte*" from Section 4(A)(i) of the default Protective Order. Mot. 3, Appx. B. The parties propose this modification "to accommodate" the parties' agreement "that

[2] We cite to the record of IPR2017-01976, unless otherwise noted.

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." *Id.* at 3. Although the parties have agreed to cooperate with one another regarding the handling of information asserted to be confidential, the parties may not use their own agreement to limit the Board's ability to determine whether information qualifies for confidential treatment in this proceeding.

Second, Section 4(A)(ii) of the default Protective Order states:

> Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. The nonconfidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that some or all of the redacted information does not qualify for confidential treatment.

Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,771 (Aug. 14, 2012). The parties propose deleting the phrase "or *sua sponte*" from Section 4(A)(ii) of the default Protective Order. Mot. 3, Appx. B. As discussed above, the parties may not use their own agreement to limit the Board's ability to determine whether information qualifies for confidential treatment in this proceeding.

We note that, during a conference call with the parties on May 23, 2018, we understood Petitioner to inquire about confidential information potentially becoming unsealed after a final judgment. In that regard, we

explained in an Order on May 24, 2018 that confidential information subject to a protective order ordinarily becomes public 45 days after a final judgment in a trial, but a party may file a motion to expunge confidential information from the record prior to the information becoming public. Paper 16, 4 (citing 37 C.F.R. § 42.56). We do not see that, however, as limiting the Board's ability to determine whether information qualifies for confidential treatment in the first place.

The parties also propose adding the following sentence to Section 4(A)(ii) of the default Protective Order:

> Notwithstanding the foregoing, a party may submit versions of documents containing redactions made by agreement in which the unredacted material is confidential and to be afforded the protections of this order but the redacted material is agreed to by the parties as not relevant, and in that situation, an unredacted version of the document does not need to be submitted.

Mot. 3, Appx. B. The parties propose this modification 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 "it helps clarify that such redactions are allowable notwithstanding the immediately proceeding [sic] provision that might otherwise be construed to limit redactions or construed to imply that non-redacted information is non-confidential." *Id.* at 3.

The parties have not shown sufficiently that the proposed modification is warranted. Section 4(A)(ii) of the default Protective Order permits a party to redact confidential information from the public version of a document. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,771 (Aug. 14, 2012). The parties' proposed modification also allows the

parties by agreement to redact information from the confidential version of a document filed under seal. Mot. Appx. B. In general, we do not see a justification for redacting information from the confidential version of a document filed under seal. With respect to the parties' concern that irrelevant confidential information may become public after a final judgment in this proceeding, we explained in an Order on May 24, 2018 that, after a final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public. Paper 16, 4 (citing 37 C.F.R. § 42.56).

We note that, during a conference call with the parties on May 23, 2018, we understood Petitioner to inquire specifically about sensitive personal information that is not relevant to the issues in this proceeding. In that regard, we explained in an Order on May 24, 2018 that the parties need not submit sensitive personal information to the Board that clearly is not relevant to the issues in this proceeding. Paper 16, 3–4 (citing *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 37, 6–8 (PTAB Apr. 5, 2013)). However, the parties' proposed modification to Section 4(A)(ii) of the default Protective Order is much broader in that it allows the parties by agreement to redact any information they deem irrelevant.

For the foregoing reasons, the parties' Motion is *denied* without prejudice. The parties may submit another joint motion for entry of a protective order with a proposed Protective Order that omits the proposed modifications to Sections 4(A)(i), (ii) of the default Protective Order discussed above. Also, the parties should clarify Section 3 of the proposed Protective Order (which adds a designation for Highly Confidential information) to indicate that the individuals identified in Sections 2(F), 2(G)

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