

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, INC.,
Petitioner,

v.

MONKEYmedia, INC.,
Patent Owner.

Case IPR2018-00059
Patent 9,247,226 B1

Before MARC S. HOFF, LYNNE E. PETTIGREW, and
KAMRAN JIVANI, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

ORDER

Authorizing Reply to Preliminary Response and Motion to Seal
37 C.F.R. §§ 42.5, 42.54, 42.108(c)

INTRODUCTION

Petitioner contacted the Board by email dated February 9, 2018.
Petitioner seeks leave to file a reply to Patent Owner's Preliminary Response
(Paper 8), filed January 17, 2018, with respect to the issue of the real party

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in interest. Petitioner also seeks leave to file a motion to seal the Preliminary Response and Patent Owner's Exhibit 2006.

DISCUSSION

REPLY TO PRELIMINARY RESPONSE

Pursuant to 37 C.F.R. § 42.108(c), a "petitioner may seek leave to file a reply to the preliminary response," and "[a]ny such request must make a showing of good cause."

Petitioner requests authorization to file a reply to Patent Owner's Preliminary Response to respond to the issue of whether the Petition identifies all of the real parties in interest. Petitioner states that Patent Owner does not oppose this request.

After considering the positions of the parties, we find that Petitioner has established good cause for further briefing with respect to the issue identified above. Accordingly, Petitioner is authorized to file a reply to the Preliminary Response to address only the issue of whether the Petition identifies all of the real parties in interest.

MOTION TO SEAL

Petitioner seeks to file a motion to seal Patent Owner's Preliminary Response and Patent Owner's Exhibit 2006 because they allegedly contain confidential business information of Petitioner. Petitioner states that in connection with a motion to seal, the parties would prepare and file redacted versions of both documents and a proposed protective order.

Petitioner is authorized to file a motion to seal Patent Owner's Preliminary Response and Exhibit 2006. The motion to seal shall include a proposed protective order, filed as an exhibit. The parties are encouraged to adopt the Board's default protective order. *See* Default Protective Order,

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Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,769 (App'x B). If the parties choose to propose a protective order deviating from the default protective order, they must submit the proposed protective order along with a marked-up comparison of the proposed and default protective orders showing the differences.

The parties shall confer and agree to redacted versions of the Preliminary Response and Exhibit 2006, which shall be filed contemporaneously with the motion to seal. The unredacted versions of the Preliminary Response (Paper 8) and Exhibit 2006 filed previously by Patent Owner shall remain provisionally sealed pending a decision on the motion to seal. *See* 37 C.F.R. § 42.14.

Petitioner is reminded that the standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The filing party bears the burden of proof in showing entitlement to the relief requested in a motion to seal. 37 C.F.R. § 42.20(c); *see also* 37 C.F.R. § 42.22(a) (A motion must include a “full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence including material facts, and the governing law, rules, and precedent.”). This includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in making the record in an *inter partes* review open to the public.

Petitioner’s motion, therefore, should discuss specific reasons that Petitioner believes each redacted portion of the Preliminary Response and Exhibit 2006 constitutes “confidential information” under 35 U.S.C. § 316(a)(7). Petitioner should identify specific proposed redacted portions by page and line number, and provide particular reasons why the identified

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portions constitute “confidential information” (e.g., trade secret or other confidential research, development, or commercial information). The motion also should include a detailed discussion that explains why good cause exists to place such “confidential information” under seal.

ORDER

Accordingly, it is:

ORDERED that Petitioner is authorized to file a reply to Patent Owner’s Preliminary Response, addressing only the issue of whether the Petition identifies all of the real parties in interest;

FURTHER ORDERED that the reply is limited to five pages and is due no later than March 2, 2018;

FURTHER ORDERED that Petitioner is authorized to file a Motion to Seal Patent Owner’s Preliminary Response and Patent Owner’s Exhibit 2006;

FURTHER ORDERED that the Motion to Seal is limited to five pages and is due no later than March 2, 2018;

FURTHER ORDERED that, contemporaneously with the Motion to Seal, Patent Owner shall file redacted versions of the Preliminary Response and Exhibit 2006;

FURTHER ORDERED that Patent Owner is authorized to file an Opposition to Petitioner’s Motion to Seal; and

FURTHER ORDERED that any Opposition filed by Patent Owner is limited to five pages and is due no later than March 9, 2018.

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