

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZSCALER, INC.,
Petitioner,

v.

SYMANTEC CORPORATION,
Patent Owner.

Case IPR2018-00912 (Patent 8,316,429 B2)
Case IPR2018-00913 (Patent 8,316,429 B2)¹

Before DANIEL N. FISHMAN and MINN CHUNG,
Administrative Patent Judges.

FISHMAN, *Administrative Patent Judge.*

ORDER

Denying Petitioner's Renewed Motion to Seal and
Authorizing Petitioner's Second Renewed Motion to Seal
37 C.F.R. § 42.54

¹ This order addresses issues that are the same in both identified cases. We exercise our discretion to issue one order to be filed in each case. The parties are not authorized to use this style heading in subsequent papers.

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In our Final Written Decision in the above-captioned matters, we granted the parties' motions to seal Exhibits 1067 and 2061 (the parties' demonstrative exhibits) and denied the parties' motions to seal Exhibits 1046, 1055, 2010, and 2059 and Papers 17, 26, and 35. Paper 50, 73. Petitioner filed an authorized Renewed Unopposed Motion to Seal seeking to seal Exhibits 1046, 1055, 2010, and 2059 and Papers 17, 26, 35, 49, and 50 (along with proposed redacted public versions of such papers and exhibits). *See* Paper 59² ("Renewed Mot." or "Renewed Motion").

In a conference call on December 20, 2019 with counsel for the parties and Judges Fishman and Chung, the panel expressed its continued concerns regarding the substance of Petitioner's Renewed Motion. In the conference call, the Board expressed concerns regarding the Renewed Motion similar to the concerns that formed the basis of our denial of the original motions to seal, specifically, (1) the Renewed Motion provides inadequate explanation of the nature of the alleged confidential information to establish good cause for sealing of the identified papers and exhibits and (2) the proposed redactions for papers and exhibits requested to be partially sealed were, in the opinion of the Board, excessive.

In the conference call, the Board noted a few proposed redactions for which "good cause" could likely be established with a more detailed explanation. In particular, details of Mr. Udupa's personal finances and discussions relating to Zscaler's internal procedures for preparing and filing patent applications are subjects the Board acknowledges might be shown to be confidential and, thus, may be sealed for good cause.

² We refer only to papers filed in IPR2018-00912. Similar (identical) papers and exhibits are filed in IPR2018-00913.

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By contrast, the Board expressed skepticism that “good cause” can be established to seal as confidential broad, high-level discussions regarding design options in Zscaler product—discussions devoid of any detailed technical designs or code (discussions by experts in declarations or depositions or discussions among Zscaler personnel in certain exhibits). For example, the Board cannot conceive of an argument establishing good cause for redacting page and line numbers in the word index of the deposition of Mr. Udupa. Ex. 2059, 60–71.

In each of the above-identified matters, Petitioner is authorized to file a Second Renewed Motion to Seal requesting again that certain papers and exhibits be partially or entirely sealed. The second renewed motion to seal may not exceed five (5) pages and will be filed no later than January 27, 2020. The second renewed motion to seal will be accompanied by newly redacted versions of any papers or exhibits to be partially sealed. To establish good cause for the requested protection, Petitioner’s Second Renewed Motion to Seal and accompanying redactions must better explain the need for confidentiality (and, thus, redaction) of any alleged confidential information to cure the deficiencies noted in our Final Written Decisions.

The parties will confer in hopes of filing the Second Renewed Motion to Seal as unopposed. However, in each of the above-identified matters, if Patent Owner opposes Petitioner’s new motion to seal, Patent Owner is authorized to file an Opposition to Petitioner’s Second Renewed Motion to Seal no later than February 3, 2020 and not to exceed five (5) pages.

All presently protected papers and exhibits will remain sealed until further notice from this panel.

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Accordingly, it is:

ORDERED that, in each of the above-identified matters, Petitioner is authorized to file a Second Renewed Motion to Seal no later than January 27, 2020 and not to exceed five (5) pages;

FURTHER ORDERED that, in each of the above-identified matters, together with its Second Renewed Motion to Seal, Petitioner shall file narrowly redacted public versions of any documents sought to be sealed;

FURTHER ORDERED that, in each of the above-identified matters, if Patent Owner opposes Petitioner's Second Renewed Motion to Seal, Patent Owner is authorized to file an Opposition to Petitioner's Second Renewed Motion to Seal no later than February 3, 2020 and not to exceed five (5) pages; and

FURTHER ORDERED that, in each of the above-identified matters, all presently protected papers and exhibits in the record will remain sealed until further notice from this panel.

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