

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOBILE TECH, INC.,
Petitioner,

v.

INVUE SECURITY PRODUCTS INC.,
Patent Owner.

Case IPR2018-01138
Patent 9,659,472 B2

Before JUSTIN T. ARBES, STACEY G. WHITE, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

WHITE, *Administrative Patent Judge*.

DECISION
Granting Patent Owner's Motion to Seal
37 C.F.R. §§ 42.14, 42.54

I. BACKGROUND

Patent Owner, InVue Security Products Inc., filed a Motion to Seal and for Entry of Protective Order. Paper 15 (“Motion” or “Mot.”). Patent Owner moves to seal portions of the following materials, providing public, redacted versions for the documents:

Document	Version Submitted Under Seal	Redacted Version
Transcript of Christopher Remy’s deposition	Ex. 2022	Ex. 2036
Chart created by Patent Owner depicting the ownership structure of Petitioner	Ex. 2021	Ex. 2035

See Mot. 4.¹ Patent Owner indicates that Petitioner, Mobile Tech, Inc., does not oppose its Motion to Seal and for Entry of Protective Order. *Id.* at 6.

II. DISCUSSION

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are

¹ This Motion also seeks to seal Patent Owner’s Response (Paper 14). On March 25, 2019, Anthony Blum, Counsel for Patent Owner, contacted us via email and stated that the parties had conferred regarding the confidentiality of Paper 14 and that they agreed that Patent Owner’s Response did not need to be sealed. In response to that email, Paper 14 was made available to the public and we regard Patent Owner’s request to seal Paper 14 as withdrawn.

open and available for access by the public; a party, however, may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7). In that regard, the Trial Practice Guide provides:

The rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.

...

Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. § 42.54.

77 Fed. Reg. at 48,760.

The standard for granting a motion to seal is “for 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).

A. *Confidential Information*

Patent Owner argues that confidential and highly confidential information was discussed during Mr. Remy’s deposition such as “information regarding [Petitioner’s] internal business and confidential agreements, previous acquisitions of its stock, legal funding, compensation, stock ownership by individuals, communications with and between management and directors, and confidential settlement discussions.” Mot. 3–4. Patent Owner asserts that Petitioner has stated “public disclosure of such confidential and highly confidential information would unnecessarily reveal [Petitioner’s] sensitive information and potentially cause harm to

[Petitioner’s] competitive and strategic position in the marketplace.” *Id.* at 4. Upon reviewing Exhibits 2021 and 2022, and Patent Owner’s arguments regarding their confidential nature, we are persuaded that good cause exists to seal these Exhibits. We also note that the redacted portions of these materials (Exs. 2035 and 2036) appear to be tailored narrowly to only confidential information.

B. Proposed Protective Order

Patent Owner provides a proposed protective order (Ex. 2038) agreed to by the parties, along with a comparison showing changes made to the Board’s default protective order (Ex. 2039). Mot. 5–6. Patent Owner contends that the changes are necessary because Petitioner has asserted that certain information discussed during Mr. Remy’s deposition is “highly confidential, such that its access should be further limited to exclude access from Patent Owner’s in-house counsel,” and Patent Owner agrees. *Id.* at 5. As a result, the proposed protective order “create[s] a two-tiered structure” with an additional designation of “PROTECTIVE ORDER MATERIAL – ATTORNEY’S EYES ONLY,” “such that Patent Owner’s in-house counsel, [Trent A. Kirk], who is a back-up counsel of record in this case, does not have access to ‘highly confidential’ information.” *Id.* at 5–6; *see* Ex. 2038 § 3.

We have reviewed the additional sections added to the proposed protective order and are persuaded that they are appropriate under the circumstances. In particular, Sections 2(A), 2(F), 3, and 6 place additional restrictions on the parties and their counsel, but not on the Office or the public accessing non-confidential materials from the Office. We also note

that the proposed protective order is identical to the protective order entered in the related proceedings. *See* Mot. 5; IPR2017-00344, Paper 35. Thus, the proposed protective order will be entered and will govern the treatment and filing of confidential information in the instant proceeding, and the requested materials will be sealed pursuant to that order.^{2, 3}

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner's Motion to Seal and for Entry of Protective Order is *granted* as to Exhibits 2021 and 2022; and

FURTHER ORDERED that Patent Owner's proposed protective order (Exhibit 2038) is entered and shall govern the treatment and filing of confidential information in the instant proceeding.

² Patent Owner filed Exhibit 2022 as "Board Only," and Exhibit 2021 as "Parties and Board Only," in the Patent Trial and Appeal Board End to End (PTAB E2E) system.

³ Patent Owner lists four portions of Mr. Remy's deposition transcript (Ex. 2022) as "PROTECTIVE ORDER MATERIAL – ATTORNEY'S EYES ONLY." Ex. 2037, 2.

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