

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION and HP INC.,

Petitioners

v.

SYNKLOUD TECHNOLOGIES, LLC,

Patent Owner

IPR2020-00316

Patent 9,098,526 B1

PATENT OWNER'S MOTION TO SEAL
37 C.F.R. §§42.54, 42.55

Patent Owner Synkcloud Technologies, LLC (“PO” herein) moves to submit confidential information as evidence in support of its position in the above-captioned matter, and accordingly moves that Exhibits 2029 and 2030, submitted contemporaneously herewith, be accepted but not made public and maintained confidential to a Modified Protective Order submitted herewith as Exhibit 2036. In so moving, PO is guided by this Board’s Decision in IPR2017-01053, Paper No. 27, and decisions cited therein, including IPR2012-00001, Paper No. 34.

PO, as an element of its position that the claims challenged in the above-captioned IPR are not obvious over prior art cited, wishes to submit a license extended under the patent at issue, U.S. Patent 9,098,526 along with an associated claim chart as secondary indicia of non-obviousness pursuant to well-established caselaw. *See, e.g., Rothman v. Target Corp.* 556 F. 3d 1310, 1321 (Fed. Cir. 2009). The public is not denied essential information by sealing Exhibits 2029 and 2030. The Exhibits are a license between the owner of the ‘526 Patent and a recognized corporation, in consideration of payment of fees, along with an associated claim chart. No other issues, such as sales, conditions, promotions or other issues are set forth in or raised by the license, and thus, questions such as nexus and the like are not raised. PO does not rely on the identity of the Licensee, other than to note it is a recognized major corporation in the computer technology field. PO does not rely on the specific terms of the

money, and no other consideration flows between the parties.

By its terms, further information with respect to the license and associated claim chart is confined to outside counsel only. To that end, PO has fashioned a Protective Order premised on the Board's default protective order in the practice guide, but altered to limit the confidential information submitted to the specific counsel appearing for Petitioners in this matter. Submission of this information, which Court's have often found of value in considering questions of obviousness, without seal or protection, would potentially vitiate the license as a possible breach thereof and/or expose PO to liability.

Undersigned counsel has conferred with opposing counsel. Opposing counsel agreed to the Modified Protective Order that is Exhibit 2036, although they reserved their right to revise this protective order if Microsoft confidential information were to be filed in this IPR in the future.

Accordingly, PO respectfully requests Exhibits 2029 and 2030 be held confidential to the Board provisionally, pending grant of this Motion or expungement if this Motion is denied.

Respectfully, PO submits it has met the Board's standard for submission under seal, *Argentum Pharmaceuticals LLC v. Alcon Research*, IPR 2017-01053, Paper 27 (January 19, 2018) at p. 4. 1) The confidential information, a patent license, is truly confidential – it is confidential by its terms. 2) Concrete harm would result upon public disclosure of Exhibit 2029. it would constitute a

rely in the trial on the specific information sought to be sealed. It is PO's strong evidence of a judicially recognized indication of non-obviousness – a patent license. 4) On balance, the interest in maintaining confidentiality as to this one exhibit outweighs the strong public interest in having an open record.

On this basis, and in light of the proposed Modified Protective Order that is Exhibit 2036, PO respectfully requests grant of this Motion and acceptance of Exhibits 2029 and 2030 under seal.

Respectfully submitted,

/Gregory J. Gonsalves/

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e) and by the agreement of counsel for Petitioner, I certify that on September 21, 2020, I served a complete electronic copy of the Motion on the Petitioner's lead and backup counsel at the following email addresses:

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