

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

DDC TECHNOLOGY, LLC,
Patent Owner.

IPR2023-00707 (Patent 9,420,075 B2)
IPR2023-00708 (Patent 9,811,184 B2)¹

Before KALYAN K. DESHPANDE, *Acting Deputy Chief Administrative Patent Judge*, PATRICK M. BOUCHER, and JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

DIRBA, *Administrative Patent Judge*.

ORDER
Granting-in-Part Motions to Seal and
Granting Motion for Protective Order
37 C.F.R. §§ 42.14, 42.54

¹ This Decision addresses an issue that is the same in both proceedings, so we exercise our discretion to issue one Order to be docketed in each. The parties are not authorized to use this caption.

IPR2023-00707 (Patent 9,420,075 B2)

IPR2023-00708 (Patent 9,811,184 B2)

There are three pending motions to seal in each of these proceedings: Paper 13 (“First Motion”); Paper 18 (“Second Motion”); and Paper 19 (“Third Motion”).² In these motions, the parties seek to protect as confidential certain information addressed in connection with their arguments regarding real parties in interest, privies, and secondary considerations. In addition, the First Motion also seeks entry of a Protective Order. *See* Paper 13, Appendix A.

For the reasons explained below, we *enter* the Protective Order, *grant-in-part* the First Motion, *grant* the Second Motion, and *grant* the Third Motion.

Legal Standard

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. *See Garmin Int’l v. Garmin Speed Tech’s, LLC*, Case IPR2012–00001 (PTAB Mar. 14, 2013) (Paper 34). 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 open and available for access by the public.

A party seeking to depart from the default rule may file a motion to seal. If such a motion is filed, the moving party bears the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c). The standard for granting a motion to seal is “for good cause.” 37 C.F.R.

² We cite only to the papers in IPR2023-00707, but substantially similar papers were filed in IPR2023-00708.

IPR2023-00707 (Patent 9,420,075 B2)

IPR2023-00708 (Patent 9,811,184 B2)

§ 42.54(a). 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. *See* PTAB Consolidated Trial Practice Guide (“Trial Practice Guide”)³ 19.

First Motion

In the First Motion, Patent Owner requests entry of a Protective Order that the parties agree to and that is similar to the Board’s Default Protective Order. *See* First Motion, Appx. A (proposed protective order), Appx. B (showing differences between the proposed order and the Board’s default order); *see also* Trial Practice Guide 107–122 (Appx. B). Based on the representations in the First Motion, Patent Owner has shown good cause for entering the Protective Order.⁴

In addition, Patent Owner moves to seal Exhibits 2005, 2006, 2007, 2008, 2015, 2017, 2019, 2020, 2024, 2031, 2032, 2034, 2037, 2041, 2042, and 2047. First Motion 1. Patent Owner also moves to seal the portions of its Preliminary Response that cite and discuss these exhibits. *Id.* at 11. The portions of the Preliminary Response (Paper 14) requested to be sealed can easily be identified because Patent Owner has used red text for that information in the document. Patent Owner has also filed a redacted, public version of the Preliminary Response (Paper 12) that omits the information.

³ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

⁴ When confidential information is to be entered into the record, it is the responsibility of the party whose confidential information is at issue, not necessarily the proffering party, to file the motion to seal. For purposes of these proceedings, the parties have agreed that the proffering party will file the motion to seal and, when applicable, include arguments prepared by the other party. *See* First Motion, Appx. A § 6.A(iii).

IPR2023-00707 (Patent 9,420,075 B2)

IPR2023-00708 (Patent 9,811,184 B2)

We determine that Patent Owner has shown good cause for sealing the Preliminary Response (Paper 14) and Exhibits 2005, 2006, 2007, 2008, 2015, 2017, 2019, 2020, 2024, 2031, 2032, 2037, 2041, 2042, and 2047. We are persuaded that these documents contain confidential information of one or more entities (including Petitioner, Patent Owner, and third-parties), and given the nature of the information at issue, we are sufficiently persuaded that harm could result from disclosure. In addition, these documents are primarily cited and discussed in connection with the parties' arguments regarding real parties-in-interest and privies. We have evaluated these arguments and determine that they reveal no deficiency in the Petition and do not implicate any statutory bar. As a result, we are persuaded that the understandability of the public record will not be materially diminished by these limited redactions.

As for Exhibit 2034, this exhibit is only introduced in support of Patent Owner's arguments regarding objective indicia of non-obviousness. Thus, it may be relevant to the substantive patentability disputes at issue in these proceedings, and it may implicate public access issues. Moreover, although both Petitioner and Patent Owner assert that they designated this document as confidential during district court litigations, neither party provides any justification of that designation or explanation for why the document is confidential. First Motion 7–8. Further, Patent Owner has not filed a proposed redacted version of this exhibit, despite the fact that it appears to include at least some public information. *See, e.g.*, Prelim. Resp. 29, 47, 49, 50 (quoting from Exhibit 2034 in the public record).

At this juncture, we conditionally grant-in-part the Motion to Seal for Exhibit 2034, and we authorize the parties to file a Supplemental Renewed

IPR2023-00707 (Patent 9,420,075 B2)

IPR2023-00708 (Patent 9,811,184 B2)

Motion to Seal this exhibit within fourteen days of this Order. Exhibit 2034 will be maintained under seal pending a ruling on any Supplemental Renewed Motion to Seal. But, absent such a motion, Exhibit 2034 will be made public.

Accordingly, we enter the Protective Order; *grant-in-part* the First Motion (Paper 13) with respect to the Preliminary Reply and Exhibits 2005, 2006, 2007, 2008, 2015, 2017, 2019, 2020, 2024, 2031, 2032, 2037, 2041, 2042, and 2047; and *conditionally grant-in-part* the First Motion with respect to Exhibit 2034.

Second Motion

In the Second Motion, Petitioner requests sealing of the portions of the Preliminary Reply and Exhibit 1019. The portions of the Preliminary Reply (Paper 15) requested to be sealed can easily be identified because Petitioner has used red text for that information in the document. Petitioner has also filed a redacted, public version of the Preliminary Reply (Paper 16) that omits the information.

Based on the representations in the Second Motion, Petitioner has shown good cause for sealing the identified portions of the Preliminary Reply and Exhibit 1019. Accordingly, we *grant* the Second Motion (Paper 18).

Third Motion

In the Third Motion, Patent Owner requests sealing of the portions Preliminary Sur-Reply. The portions of the Preliminary Sur-Reply (Paper 20) requested to be sealed can easily be identified because Patent Owner has used red text for that information in the document. Patent Owner

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.