

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner,

v.

GREE, INC.,
Patent Owner.

PGR2020-00038 (Patent 10,307,675 B2)
PGR2020-00039 (Patent 10,307,676 B2)
PGR2020-00041 (Patent 10,307,677 B2)

Before MICHAEL W. KIM, *Vice Chief Administrative Patent Judge*,
LYNNE H. BROWNE, HYUN J. JUNG, and AMANDA F. WIEKER,
Administrative Patent Judges.¹

WIEKER, *Administrative Patent Judge*.

ORDER

Granting Petitioner's Motion to Expunge

37 C.F.R. § 42.56

Dismissing Petitioner's Motion to Seal

37 C.F.R. § 42.14 and 42.54

¹ This is not an expanded panel. A three-judge panel is assigned to each proceeding.

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I. INTRODUCTION

Prior to the Board’s decision on whether to institute review in these proceedings, Petitioner submitted Exhibit 1023 into the record of each proceeding, accompanied by a Motion to Seal and for Entry of Protective Order. *See* PGR2020-00038, Paper 8.² In September 2020, the Board denied institution of these proceedings and, in October 2020, the Board denied Petitioner’s requests for reconsideration. *See* PGR2020-00038, Papers 14, 17.³ On November 24, 2020, with the Board’s prior authorization, Petitioner filed, in each proceeding, a Motion to Expunge Exhibit 1023. *See* PGR2020-00038, Paper 19.⁴ Petitioner has represented that Patent Owner does not oppose the Motion to Expunge.

For the reasons set forth below, we *grant* Petitioner’s Motion to Expunge and *dismiss* as moot Petitioner’s Motion to Seal.

II. ANALYSIS

“After denial of a petition to institute a trial . . . , a party may file a motion to expunge confidential information from the record.” 37 C.F.R. § 42.56. The Board’s Consolidated Trial Practice Guide explains that “[t]here is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review.” PTAB Consolidated Trial Practice Guide, 22

² *See* PGR2020-00039, Paper 8; PGR2020-00041, Paper 8.

³ *See* PGR2020-00039, Papers 14, 17; PGR2020-00041, Papers 14, 17.

⁴ *See* PGR2020-00039, Paper 18; PGR2020-00041, Paper 18.

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(2019).⁵ This expectation does not arise here, however, because the decisions denying institution of review and denying rehearing do not refer to the exhibit Petitioner seeks to have expunged. *See* PGR2020-00038, Papers 14, 17; PGR2020-00039, Papers 14, 17; PGR2020-00041, Papers 14, 17.

A party seeking expungement of material from the record must nevertheless show good cause by demonstrating that “any information sought to be expunged constitutes confidential information, and that Petitioner’s interest in expunging it outweighs the public’s interest in maintaining a complete and understandable history” of the proceeding. *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 97 at 2 (PTAB Apr. 15, 2015). In addressing whether there is good cause for expungement, Petitioner asserts that Exhibit 1023 “contains Petitioner’s confidential and highly sensitive business confidential information, disclosure of which would adversely harm Petitioner, while expungement of which would not significantly impact the public’s interest in maintaining a complete and understandable file history.” *See* PGR2020-00038, Paper 19 at 2–3; PGR2020-00039, Paper 18 at 2–3; PGR2020-00041, Paper 2–3. Petitioner also asserts that expunging Exhibit 1023 “protects a sensitive District Court Litigation document.” *See, e.g.*, PGR2020-00038, Paper 19 at 3 (asserting the document has not been made public otherwise and has been maintained as confidential in the district court litigation).

⁵ A copy of the Consolidated Trial Practice Guide is available at <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>.

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The Board did not rely on this exhibit in any manner during the course of these proceedings, so expungement does not impact the public's interest in maintaining a complete and understandable history. Considering this in conjunction with Petitioner's unopposed arguments, we are persuaded that good cause has been shown, and that Exhibit 1023 should be expunged.

Therefore, we grant Petitioner's Motions to Expunge, which renders moot the pending Motions to Seal. As such, we dismiss the Motions to Seal.

III. ORDER

Accordingly, it is:

ORDERED that Petitioner's Motion to Expunge (PGR2020-00038, Paper 19; PGR2020-00039, Paper 18; PGR2020-00041, Paper 18) is *granted*;

FURTHER ORDERED that Petitioner's Motion to Seal and for Entry of Protective Order (PGR2020-00038, Paper 8; PGR2020-00039, Paper 8; PGR2020-00041, Paper 8) is *dismissed* as moot; and

FURTHER ORDERED that Exhibit 1023 is expunged from each proceeding.

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