

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC.,
Petitioner,

v.

SUMMIT 6 LLC,
Patent Owner.

Case IPR2015-00806
Patent 7,765,482 B2

Before HOWARD B. BLANKENSHIP, GEORGIANNA W. BRADEN, and
KERRY BEGLEY, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

DECISION
Petitioner's Motion to Seal
37 C.F.R §§ 42.14 and 42.54

INTRODUCTION

Petitioner filed a Corrected Motion to Seal (Paper 40, “Mot.”) that seeks to seal (1) Petitioner’s Reply to Patent Owner’s Response (“Reply”) and (2) Exhibits 1016, 1018, and 1019 submitted with the Reply. Patent Owner does not oppose Petitioner’s Motion. Mot. 1. Petitioner requests that these documents be sealed under the Board’s default protective order, as filed by Patent Owner on June 15, 2015. *See* Paper 14. For reasons discussed below, Petitioner’s Corrected Motion to Seal is *denied* without prejudice.

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 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 Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012) 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.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a). In Petitioner’s Corrected Motion to Seal (Paper 40), Petitioner bears the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c). The Board needs to know why the information sought to be sealed constitutes confidential information.

In Petitioner’s Corrected Motion to Seal (Paper 40), Petitioner moves to seal the cited documents, because “Patent Owner has requested Petitioner designate as PROTECTIVE ORDER MATERIAL (Exhibits 1016 and 1019) as well as an expert declaration that relies upon documents that Patent Owner has designated as PROTECTIVE ORDER MATERIAL (Exhibit 1018).” Mot. 1. Petitioner has submitted a redacted version of its Reply, which is available publically, whereas the exhibits that are the subject of Petitioner’s Corrected Motion to Seal (Paper 40) have been filed as “Parties and Board Only.” *Id.* Neither Petitioner nor Patent Owner give any other reason for requesting to seal the documents.

As discussed previously, there is a strong public policy for making all information filed in an *inter partes* review open to the public. Petitioner, as the moving party, has failed to inform the Board why the information sought to be sealed constitutes confidential information, and thus, it fails to carry its burden to demonstrate “good cause” for sealing the documents.

We recognize a denial of Petitioner’s motion would immediately unseal the material Petitioner (and Patent Owner) desires to be placed under seal and the effect would be irreversible. Therefore, rather than denying the motion at this time, we will provide Petitioner two weeks to (1) supplement

the Motion to Seal, (2) withdraw the Motion to Seal and request to expunge Exhibits 1016, 1018, and 1019, or (3) supplement the Motion to Seal, and request to expunge Exhibits 1016, 1018, and 1019 and replace them with redacted versions that leave out the confidential information.

CONCLUSION

For the foregoing reasons, Petitioner's Corrected Motion to Seal (Paper 34) is *denied* without prejudice. It is

ORDERED that Petitioner's Reply to Patent Owner's Response and Exhibits 1016, 1018, and 1019 will be made available to the public after 5PM Eastern on Friday, April 1, 2016, unless on or prior to that time, Petitioner (1) supplements the Motion to Seal, (2) withdraws the Motion to Seal and requests to expunge Exhibits 1016, 1018, and 1019, or (3) supplements the Motion to Seal, and requests to expunge Exhibits 1016, 1018, and 1019 and replace them with redacted versions that leave out the confidential information;

FURTHER ORDERED that any supplement or revision that Petitioner chooses to file should include a detailed discussion that:

Specifies precisely, for each of Exhibits 1016, 1018, and 1019, which portions of the information in that exhibit constitute confidential information under the Office Trial Practice Guide quoted above, **and** why; and

Explains why good cause exists to place such confidential information under seal; or

Explains that only the portions of the exhibit that constitutes confidential information under the Office Trial Practice Guide quoted above has been redacted; and

FURTHER ORDERED that the explanation of good cause shall:

Include a certification that none of the alleged confidential information in Exhibits 1016, 1018, and 1019 has been made available publically.

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