

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

XACTWARE SOLUTIONS, INC.,
Petitioner,

v.

EAGLE VIEW TECHNOLOGIES, INC.,
Patent Owner.

Cases IPR2016-00589 Patent 8,825,454 B2
IPR2016-00590 Patent 8,818,770 B2
IPR2016-00591 Patent 8,209,152 B2
IPR 2016-00592 Patent 9,135,737 B2¹

Before HOWARD B. BLANKENSHIP, BRYAN F. MOORE, and
STACEY G. WHITE, *Administrative Patent Judges*.

WHITE, *Administrative Patent Judge*.

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

¹ This order addresses issues that are identical in the four cases. The parties are not authorized to use this multi-case style heading.

Eagle View Technologies, Inc. (“Patent Owner”) filed a Motion to Seal (“Motion” or Mot.) (IPR2016-00589, Paper 30; IPR2016-00590, Paper 29; IPR2016-00591, Paper 36; IPR2016-00592, Paper 30)² Patent Owner’s Confidential Patent Owner Responses (IPR2016-00589, Paper 31; IPR2016-00590, Paper 30; IPR2016-00591, Paper 37; IPR2016-00592, Paper 31) and eight exhibits. Mot. 1. Petitioner does not oppose the Motion. Patent Owner also seeks entry of a Protective Order, which was submitted with the Motion to Seal and agreed to by the parties. *Id.* at 1–3, *see* Exh. A. For the reasons stated below, Patent Owner’s Motion to Seal is granted.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. The party moving to seal bears the burden of proof of showing entitlement to the requested relief, and establishing that information sought to be sealed is confidential information. 37 C.F.R. § 42.20(c).

A. Proposed Protective Order

The parties’ stipulated Protective Order differs from the default protective order in that it includes a designation of “Attorneys’ Eyes Only.” Mot. 1. This “designation is reserved for any information, document, or thing, or portion of any document or thing that contains highly sensitive business or personal information, the disclosure of which is highly likely to cause significant harm to an individual or to the business or competitive position of the designating party.” Mot. Exh. A. 3. Access to information bearing this designation is limited to individuals that have executed a

² The Motions are substantially similar. For ease of reference unless otherwise indicated, we will refer to the Motion filed in IPR2016-00589.

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document indicating their understanding of the protective order. *Id.* Exh. A.

4. After reviewing the stipulated Protective Order, we determine that it is acceptable.

B. Proposed Confidential Filings

Patent Owner asserts that Exhibits 2012, 2013, 2014, and 2015³ contain highly sensitive information regarding Eagle View Technologies' sales data, customer data, and revenue data. Mot. 4–7. Patent Owner also asserts that this information is highly sensitive business information the public disclosure of which would cause competitive harm to Patent Owner by giving “competitors an unearned competitive advantage by allowing an inside peek into Eagle View Technologies’ financial data including information regarding its customers, product revenue, and sales volume.” *Id.* at 5. Patent Owner seeks to seal Exhibits 2012, 2013, 2014, and 2015 to protect the financial data disclosed therein because that sales data constitutes confidential business information. Mot. 4–7.

Patent Owner asserts that Exhibits 2010 (IPR2016-00589), 2005 (IPR2016-00590), 2007 (IPR2016-00591), and 2010 (IPR2016-00592) are “email[s] describing the results of a proprietary customer survey and showing raw comments from Eagle View Technologies’ customers, including the customers’ views on a several different parts of Eagle View Technologies’ business and products.” Mot. 3. In addition, these Exhibits disclose the identity of at least one of Patent Owner’s customers. *Id.* Patent Owner also asserts that this information is highly sensitive business information the public disclosure of which would cause competitive harm to

³ The exhibit numbers are the same for these exhibits in each of the cases.

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Patent Owner by giving “competitors an unearned competitive advantage by allowing an inside peek into how customers of Eagle View Technologies view its products and how best a competitor could target these customers.” *Id.* at 4. Patent Owner seeks to seal Exhibits 2010 (IPR2016-00589), 2005 (IPR2016-00590), 2007 (IPR2016-00591), and 2010 (IPR2016-00592) to protect the proprietary information contained therein. Mot. 3–4.

Patent Owner asserts that Exhibits 2030, 2031 (IPR2016-00589), 2004, 2006 (IPR2016-00590), 2005, 2006 (IPR2016-00591), 2007, and 2030 (IPR2016-00592) are “internal Eagle View Technologies’ reference manual[s] describing the capabilities and functionality of Eagle View Technologies’ proprietary software, including numerous screenshots showing how the software is structured and explanations of the software’s features and operations.” Mot. 7–8, 9. Patent Owner also asserts that this information is highly sensitive business information that needs to be protected from public disclosure in order to “allow[] companies to prevent their knowledge and processes from being incorporated into a competitor’s products and allows companies to license their software to others without losing a competitive advantage.” *Id.* at 9. Patent Owner seeks to seal Exhibits 2030, 2031 (IPR2016-00589), 2004, 2006 (IPR2016-00590), 2005, 2006 (IPR2016-00591), 2007, and 2030 (IPR2016-00592) to protect the proprietary information contained therein. Mot. 7–10.

Patent Owner asserts that Exhibits 2032 (IPR2016-00589), 2007 (IPR2016-00590), 2010 (IPR2016-00591), and 2031 (IPR2016-00592) are declarations from Dr. Chandrajit L. Bajaj that provide highly sensitive information regarding how Patent Owner’s proprietary software operates including screenshots from the software and excerpts from confidential

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internal product documentation describing the structure and features of the software. Mot. 10. Patent Owner also asserts that this information is highly sensitive business information that needs to be protected from public disclosure in order to allow Patent Owner to prevent its knowledge and processes from being incorporated into a competitioner's product and to allow Patent Owner to license its software. *Id.* Patent Owner has filed a public version of these Exhibits with all confidential information redacted Ex. 2008⁴ (Public Version). Patent Owner seeks to seal 2032 (IPR2016-00589), 2007 (IPR2016-00590), 2010 (IPR2016-00591), and 2031 (IPR2016-00592) to protect the proprietary information contained therein. Mot. 10–11.

Patent Owner seeks to seal its Confidential Patent Owner Responses (IPR2016-00589, Paper 31; IPR2016-00590, Paper 30; IPR2016-00591, Paper 37; IPR2016-00592, Paper 31), because they reveal confidential information from the above described Exhibits. Mot. 11. This confidential information was redacted from the public version of the Patent Owner Responses (IPR2016-00589, Paper 32; IPR2016-00590, Paper 31; IPR2016-00591, Paper 38; IPR2016-00592, Paper 32). *Id.*

Upon considering the contents of the confidential Exhibits and Patent Owner's Responses, along with Patent Owner's representations as to the confidentiality of the information contained in these papers, we determine that Patent Owner has shown good cause for sealing these documents.

Accordingly, it is:

⁴ The exhibit numbers are the same for these exhibits in each of the cases.

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ORDERED that Patent Owner's Motions to Seal (IPR2016-00589, Paper 30; IPR2016-00590, Paper 29; IPR2016-00591, Paper 36; IPR2016-00592, Paper 30) are granted;

FURTHER ORDERED that Exhibits 2010, 2012, 2013, 2014, 2015, 2030, 2031, and 2013 of IPR2016-00589 and Patent Owner Response (Paper 31) are sealed and designated Attorneys' Eyes Only;

FURTHER ORDERED that Exhibits 2004, 2005, 2006, 2007, 2012, 2013, 2014, and 2015 of IPR2016-00590 and Patent Owner Response (Paper 30) are sealed and designated Attorneys' Eyes Only;

FURTHER ORDERED that Exhibits 2005, 2006, 2007, 2010, 2012, 2013, 2014, and 2015 of IPR2016-00591 and Patent Owner Response (Paper 37) are sealed and designated Attorneys' Eyes Only;

FURTHER ORDERED that Exhibits 2007, 2010, 2012, 2013, 2014, 2015, 2030, and 2031 of IPR2016-00592 and Patent Owner Response (Paper 31) are sealed and designated Attorneys' Eyes Only;

FURTHER ORDERED that the proposed Modified Default Protective Order submitted as Exhibit A to Patent Owner's Motion to Seal is entered and governs the treatment and filing of confidential information in this proceeding.

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