

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC. and GOOGLE LLC¹,
Petitioner,

v.

SPACETIME3D, INC.,
Patent Owner.

IPR2023-00242 (Patent 8,881,048 B2)
IPR2023-00343 (Patent 9,304,654 B2)
IPR2023-00344 (Patent 9,696,868 B2)²

Before HUBERT C. LORIN and DAVID C. McKONE,
Administrative Patent Judges.

LORIN, *Administrative Patent Judge.*

ORDER

Granting Patent Owner's Motions to Seal and Protective Order Motions
37 C.F.R. §§ 42.14, 42.54

¹ Google LLC was joined as Petitioner to IPR2023-00242, -00343, and -00344 via the granting of motions for joinder filed in IPR2023-00577, -00579, and -00578, respectively. *See* Paper 14 in IPR2023-00242, -00343, and -00344.

² This Order applies to all three proceedings. The parties, however, are not authorized to use this style heading for any subsequent papers.

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I. INTRODUCTION

Patent Owner filed an “Unopposed Motion to File Confidential Documents Under Seal Pursuant to 37 C.F.R. §§ 42.14 and 42.54” in each of IPR2023-00242, -00343, and -00344. *See* Papers 18, 21, and 21, respectively (“Motions to Seal”). In all three, Patent Owner moves to seal portions of Exhibit 2016 in IPR2023-00242, Exhibit 2017 in IPR2023-00343, and Exhibit 2018 in IPR2023-00344.

Patent Owner also filed an “Unopposed Motion for Entry of Protective Order” in each of IPR2023-00242, -00343, and -00344. *See* Papers 20, 22, and 22, respectively (“Protective Order Motions”). Each motion similarly includes a proposed Modified Protective Order as Attachment A and a redline comparison between the proposed Modified Protective Order and the Board’s default protective order as Attachment B.

Patent Owner represents that Petitioner does not oppose any of the Protective Order Motions and Motions to Seal.³ *See, e.g.*, IPR2023-0000242 (Paper 18, 2, and Paper 20, 3, respectively).

For the reasons discussed below, we *grant* Patent Owner’s Motions to Seal and Protective Order Motions.

II. MOTIONS TO SEAL

Patent Owner moves to seal portions of the Declarations of Todd Fitzsimmons filed in support of Patent Owner’s Responses in the proceedings. *See* IPR2023-00242 (Ex. 2016); -00343 (Ex. 2017); -00344

³ Patent Owner “confirmed that both Petitioners, Apple and Google, do not oppose Patent Owner’s motions.” Ex. 3002, 1.

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(Ex. 2018). Patent Owner has already filed redacted public versions of the Declarations of Todd Fitzsimmons.

The record of an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. Only “confidential information” may be protected against public disclosure. 35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54. The Board observes a strong public policy in favor of making information filed in *inter partes* review proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes a sufficient showing that

(1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

Argentum, Paper 27 at 3–4; *see also Corning Optical Commc ’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB April 6, 2015) (requiring a showing that information has not been “excessively redacted”).

Patent Owner explains that the Declarations of Todd Fitzsimmons filed in support of Patent Owner’s Responses in the proceedings disclose

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license agreements that should be treated as Confidential Business Information. *See*, for example, IPR2023-00242 (Paper 18, 2). Patent Owner indicates that the Board “previously agreed to permit them to be treated as Business Confidential Information, and [to] keep them separate from the files of the Patent 8,881,048 B2.” *Id.* (citing, *inter alia*, IPR2023-00579, Paper 10). *See* similar indications in IPR2023-00343 (Paper 21, 2) and -00344 (Paper 21, 2).

We have reviewed the exhibits containing Declarations of Todd Fitzsimmons filed in support of Patent Owner’s Responses in the proceedings. IPR2023-00242 (Ex. 2016); -00343 (Ex. 2017); -00344 (Ex. 2018). We are persuaded that good cause exists to seal the unredacted versions of the exhibits because they contain Confidential Business Information.

The motions to seal are granted.

III. PROTECTIVE ORDER MOTIONS

The Board may, for good cause, issue a protective order “to protect a party or person from disclosing confidential information.” 37 C.F.R. § 42.54(a). A protective order is not entered by default but must be proposed by one or more parties and must be approved and entered by the Board. Patent Trial and Appeal Board Consolidated Trial Practice Guide 19–20, 107 (Nov. 2019) (“Trial Practice Guide”).⁴ The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a

⁴ Available at <http://www.uspto.gov/TrialPracticeGuideConsolidated>.

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Default Protective Order. *See id.* at 19–20, 107–22. The parties may propose modifications to the Default Protective Order and the Board will generally accept such proposed changes if they are consistent with the integrity and efficient administration of the proceedings. *Id.* at 115. For example, the parties may agree to provide additional tiers or categories of confidential information, such as “Attorneys’ Eyes Only,” and the Board will presumptively accept agreed-to changes that provide additional categories of confidentiality as long as they are reasonable and adequately define what types of materials are to be included in the additional categories. *Id.* at 115–16.

Patent Owner asserts that good cause exists to enter the provided-for Modified Protective Orders, including “protecting highly confidential information that may be subject to privilege and/or the work-product doctrine.” *See*, for example, IPR2023-00242 (Paper 20, 2, Attachment A (“Modified Protective Order”), Attachment B (“Modified Protective Order” (redlined))). The provided-for Modified Protective Orders modify the Board’s Default Protective Order to “include[] an additional category of confidential information, ‘HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY.’” *Id.* at 2–3. Patent Owner asserts that “[t]his additional category is necessary to protect highly confidential information constituting settlement agreements” regarding the patents at issue, and that “[t]hese agreements have been designated as Confidential Outside Attorneys’ Eyes Only by the parties to those agreements.” *Id.* at 3.

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We have reviewed the proposed modifications to the Default Protective Orders in IPR2023-00242, -00343, and -00344. Attachment A in Papers 20, 22, 22, respectively.

We determine that although the additional category of confidential information in the provided-for Modified Protective Orders renders them different from the Default Protective Order they nevertheless adequately define what types of materials are to be included in the additional category. *See*, for example, IPR2023-00242 (Paper 20, 3, Attachment A). The changes are consistent with maintaining the integrity and efficient administration of the proceedings.⁵

Patent Owner's unopposed Protective Order Motions are granted.

⁵ We note that the panels recited on the first page of the provided-for Modified Protective Orders are incorrect. The error appears to be inadvertent. The Protective Order Motion in IPR2023-00242 (Paper 20, Attachment A) was filed the same day as the Board issued a Panel Change Order (Paper 19). In IPR2023-00343 (Paper 22, Attachment A) and -00344 (Paper 22, Attachment A), the first page states "Before KALYANK. DESHPANDE, Acting Deputy Chief Administrative Patent Judge." Acting Deputy Chief Administrative Patent Judge Deshpande authored the Panel Change Orders. *See* IPR2023-00343 (Paper 16); -00344 (Paper 16). He is not a member of the panel deciding these cases.

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IV. ORDER

Accordingly, it is

ORDERED that Patent Owner's Motions to Seal are *granted* with respect to Exhibit 2016 in IPR2023-00242, Exhibit 2017 in IPR2023-00343, and Exhibit 2018 in IPR2023-00344; and

FURTHER ORDERED that Patent Owner's Protective Motions are *granted* and the modified Protective Orders (Attachment A of Paper 20 in IPR2023-00242, Attachment A of Paper 22 in IPR2023-00343, and Attachment A of Paper 22 in IPR2023-00344) are *entered* in the respective proceedings.

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