

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC. and GOOGLE LLC
Petitioners

v.

SPACETIME3D, INC.
Patent Owner

Case IPR2023-00344¹
Patent No. 9,696,868 B2

**UNOPPOSED MOTION TO FILE CONFIDENTIAL DOCUMENTS
UNDER SEAL PURSUANT TO 37 C.F.R. § § 42.14 & 42.54**

¹ Google LLC, which filed a petition in IPR2023-00578, has been joined as a petitioner in this proceeding.

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner SpaceTime3D, Inc. (“Patent Owner”) respectfully submit this Unopposed Motion to Seal portions of Exhibit 2018 (EX2018), which was filed concurrently with Patent Owner’s Response (Paper No. 19).

I. INTRODUCTION

SpaceTime3D’s Fitzsimmons declaration (EX2018) discloses, in part, evidence that consists of license agreements concerning the patent-at-issue, i.e., the '868 Patent. All of the information that SpaceTime3D moves to seal previously was designated by the parties to those agreements as containing its Confidential Business Information. The Board also previously agreed to permit them to be treated as Business Confidential Information, and the keep them separate from the files of the Patent 9,696,868 B2. *See* Case No. PR2023-00579, Paper 10; *see also id.* at Paper 13 (find that the LG Settlement Agreement contains business confidential information); IPR2020-01417, Papers 21 and 22 (same as to Samsung Settlement Agreement). SpaceTime3D has filed a public version, with confidential portions redacted, of the Declaration of Todd Fitzsimmons. Counsel for the parties have conferred via email. Petitioner indicated that it does not oppose the motion in principle as to sealing of the confidential aspects of Exhibit 2018 subject to reviewing the modified protective order Patent Owner proposes to file. Patent

Owner has provided Petitioner with a copy of a proposed protective order and will work with Petitioner to promptly finalize and file the protective order. As such, SpaceTime3D believes that the instant motion is unopposed.

II. MOTION TO SEAL LEGAL STANDARD

“There is a strong public policy for making all information filed in a quasijudicial administrative proceeding open to the public.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, IPR2012–00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). The record for an inter partes review shall be made available to the public, except as otherwise ordered on a motion to seal. 35 U.S.C. § 326(a)(1); 37 C.F.R. § 42.14. The documents and information that are the subject of the motion to seal shall be treated as sealed until the motion is decided. *Id.* In determining whether to grant a Motion to Seal, the Board must find “good cause” and “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.” 37 C.F.R. § 42.54(a); Consolidated Trial Practice Guide (November 2019) at 19 *see also Argentum Pharms. LLC v. Alcon Res., Ltd.*, IPR2017-01053, Paper 27 at 3-4 (PTAB Jan. 19, 2018) (Informative) (describing the “good cause” standard). As described in the Consolidated Trial Practice Guide, the Board identifies 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.” The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. *See Argentum*, Paper 27 at 3–4. A party moving to seal has the burden of 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 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. *Id.* These factors support granting SpaceTime3D's motion to seal.

III. THE EXHIBITS REQUESTED TO BE SEALED CONTAIN SPACETIME3D'S AND THIRD PARTIES' CONFIDENTIAL BUSINESS INFORMATION

Exhibit 2018 is the Declaration of Todd Fitzsimmons in support of SpaceTime3D's Patent Owner's Response. Exhibit 2018 contains license agreements designated as SpaceTime3D's, LG's and Samsung's Confidential Business Information. SpaceTime3D has concurrently filed a public version of Exhibit 2018 with the Confidential Business Information redacted.

None of this confidential information have been made public. Because SpaceTime3D, LG and Samsung have designated the Settlement Agreements as its Confidential Business Information, which the Board previously found to contain Confidential Business Information, good cause exists to seal Exhibit 2018. *See* Case No. PR2023-00579, Paper 10; *see also id.* at Paper 13 (find that the LG Settlement Agreement contains business confidential information); IPR2020-01417, Papers 21 and 22 (same as to Samsung Settlement Agreement).

As noted, the Parties shortly will be filing a motion for entry of a protective order governing the use and disclose of confidential exhibits or papers in this Trial.

The Parties respectfully request that the Board grant this Motion to Seal the Confidential Business Information of Exhibit 2018.

DATED: October 19, 2023

Respectfully submitted,

Todd Fitzsimmons

Todd E. Fitzsimmons, Reg. No. 44,683
Fitzsimmons IP Law, P.C.
P.O. Box 199
Gardena, CA 90248
Tel: (571) 210-8000
todd@fitziplaw.com

Gregory S. Cordrey, Reg. No. 44,089
Jeffer Mangels Butler & Mitchell LLP
3 Park Plaza, Suite 1100
Irvine, CA 92614
Tel: (949) 623-7236
gcordrey@jmbm.com

*Attorneys for Patent Owner
SpaceTime3D, Inc.*

CERTIFICATION OF CONFERENCE

Pursuant to 37 C.F.R. § 42.54(a), Petitioner and Patent Owner hereby certify that they have conferred in good faith.

DATED: October 19, 2023

Respectfully submitted,

Todd Fitzsimmons

Todd E. Fitzsimmons, Reg. No. 44,683
Fitzsimmons IP Law, P.C.
P.O. Box 199
Gardena, CA 90248
Tel: (571) 210-8000
todd@fitziplaw.com

Gregory S. Cordrey, Reg. No. 44,089
Jeffer Mangels Butler & Mitchell LLP
3 Park Plaza, Suite 1100
Irvine, CA 92614
Tel: (949) 623-7236
gcordrey@jmbm.com

*Attorneys for Patent Owner
SpaceTime3D, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2023, I caused a true and correct copy of the foregoing Unopposed Motion to File Confidential Documents Under Seal Pursuant to 37 C.F.R. §§ 42.14 & 42.54 to be served via electronic mail on the Petitioners at the following correspondence addresses of record for the '343 IPR:

Fish & Richardson P.C.
60 South Sixth St., Suite 3200
Minneapolis, MN 55402

W. Karl Renner, Reg. No. 41,265
Andrew B. Patrick, Reg. No. 63,471
Kenneth Wayne Darby, Jr., Reg. No. 65,068
Usman A. Khan, Reg. No. 70,439
Email: IPR50095-0110IP1@fr.com.;

Erika Arner, Reg. No. 57,540
Cory Bell, Reg. No. 75,096
Yanyi Liu, Reg. No. 71,046
Yinan Liu, Reg. No. 72,482
FINNEGAN, HENDERSON, FARABOW,
GARRETT, & DUNNER LLP
erika.arner@finnegan.com
cory.bell@finnegan.com
yanyi.liu@finnegan.com
yinan.liu@finnegan.com

Respectfully submitted,

/s/Todd E. Fitzsimmons
Todd E. Fitzsimmons, Reg. No. 44,683
Fitzsimmons IP Law, P.C.
P.O. Box 199