

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION and AFFIRMED NETWORKS, INC.,
Petitioner,

v.

LEMKO CORPORATION,
Patent Owner.

IPR2023-00529
Patent 7,653,414 B2

Before FRANCES L. IPPOLITO, BRIAN D. RANGE, and SCOTT
RAEVSKY, *Administrative Patent Judges*.

RANGE, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's Motion to Seal
and Entering the Default Protective Order
37 C.F.R. §§ 42.14, 42.54(a)

INTRODUCTION

Patent Owner filed a Motion to Seal requesting entry of the Board’s Default Protective Order, and moving to seal Exhibits 2037 and 2038 in their entirety. Paper 19, “PO Mot.” For the reasons set forth below, these motions are *granted*.

DEFAULT PROTECTIVE ORDER

The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information. 37 C.F.R. § 42.54(a) (2022). 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), <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“Trial Practice Guide”). The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a default protective order. *See id.* at 19–20, 107–22 (Appendix B).

In its first Motion, Patent Owner requested that we enter the default protective order as reflected by Exhibit 2054. PO Mot. 3. Patent Owner indicates that Petitioner does not oppose entry of the protective order. PO Mot. 1. The order Patent Owner provides at Exhibit 2054 is the same as the default protective that the Trial Practice Guide sets forth. Given the agreement of the parties, we enter the default protective order as set forth at Exhibit 2054, without modification.

EXHIBITS 2037 and 2038

Under 37 C.F.R. § 42.14, by default all papers filed in *inter partes* review proceedings are available to the public. Only “confidential information” is subject to protection against public disclosure. 35 U.S.C.

§ 316(a)(7) (2018); 37 C.F.R. § 42.54. The Board also observes a strong policy in favor of making all information filed in *inter partes* review proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Rsch., Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

In an *inter partes* review, a moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). In the context of motions to seal, the standard for granting the requested relief is “good cause.” 37 C.F.R. § 42.54(a). A party must make 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 Apr. 6, 2015) (requiring a showing that information has not been “excessively redacted”).

Patent Owner seeks to maintain the entirety of Exhibits 2037 and 2038 under seal. PO Mot. 1–3. According to Patent Owner, the documents consist of internal business information and documents that have not been published or made public. *Id.* at 3. Petitioner did not oppose Patent Owner’s motion to seal. *Id.* at

Exhibit 2037 appears to be a “Lemko Node” user manual. Ex. 2037, 1. The manual is marked “LEMKO PROPRIETARY” and indicates it “is Lemko Corporation confidential.” *Id.* It appears that every page of the document includes a confidential and/or proprietary notation. *Id. passim.*

Exhibit 2038 is a one-page document that appears to provide technical information relating to various “plan_name[s].” Ex. 2038.

Upon review, we accept Patent Owner’s uncontested characterizations and determine that the documents appear to contain confidential information. Furthermore, due to the extent of the confidential information contained, it does not appear feasible to enter a redacted, public version of these documents. We, therefore, determine there is good cause to grant Patent Owner’s motion to seal Exhibits 2037 and 2038 in their entirety.

ORDER

In light of the foregoing, it is hereby:

ORDERED that the Board’s default protective order as set forth at Exhibit 2054 is entered in this proceeding, and the parties shall comply with its provisions in their entirety;

FURTHER ORDERED that Patent Owner’s Motion to Seal (Paper 19) is *granted*.

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