

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-in-Part and Denying-in-Part Petitioner's Motion to Seal
37 C.F.R. §§ 42.14

INTRODUCTION

Petitioner filed a Motion to Seal requesting entry of the Board’s Default Protective Order, and moving to seal Petitioner’s Reply Brief (Paper 28) and Exhibit 1022 in their entirety. Paper 27, “Pet. Mot.” For the reasons set forth below, this motion is granted but only to the extent that the Reply Brief and Exhibit 1022 will temporarily be kept under seal pending the parties filing appropriate papers to justify more permanent sealing.

ANALYSIS

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”).

Petitioner seeks to maintain (at least portions of) Petitioner’s Reply Brief (Paper 28) and Dr. Cooklev’s deposition transcript (Exhibit 2037) under seal. PO Mot. 1–3. According to Petitioner, the Reply Brief cites Patent Owner’s Exhibits 2037 and 2038 which Patent Owner’s counsel designated confidential. Pet. Mot. 1. According to Petitioner, the Reply Brief also cites a small portion of Dr. Cooklev’s deposition transcript (Ex. 1022) which addresses Exhibit 2037 (pages 76–80). *Id.* Patent Owner does not oppose Petitioner’s motion. *Id.* at 2.

Petitioner argues that it is Patent Owner’s burden to establish the need to seal Exhibits 2037 and 2038, portions of Dr. Cooklev’s deposition, and Petitioner’s Reply citing to these Exhibits. *Id.* (We previously already granted Patent Owner’s motion to seal Exhibits 2037 and 2038. Paper 35.)

At present, the record lacks a redacted version of Petitioner’s Reply Brief and also lacks any argument as to why any portions of Petitioner’s Reply brief or of Dr. Cookley’s deposition satisfy the four *Argentum* factors. As such, we do not fully grant Petitioner’s motion to seal at this time.

Petitioner’s motion states that “Petitioners will further meet and confer with Patent Owner in connection with filing a redacted version of its Reply Brief and Exhibit 1022.” Pet. Mot. 2. The panel will reconsider a motion to seal once Petitioner or Patent Owner provides minimally redacted versions of the Reply Brief and Exhibit 1022 for the record and once Petitioner or Patent Owner provides a renewed motion to seal addressing the *Argentum* factors we explain above. If neither party files such redacted

versions and motion in a timely basis (as ordered below), the Reply Brief and Exhibit 1022 will be made publicly available.

ORDER

In light of the foregoing, it is hereby:

ORDERED that Petitioner's motion to Seal (Paper 27) is granted-in-part;

FURTHER ORDERED that Petitioner's Reply Brief and Exhibit 1022 will remain under seal for the time being;

FURTHER ORDERED that, within thirty (30) days of this order, Petitioner and/or Patent Owner may file a renewed motion to seal and may file redacted versions of Petitioner's Reply Brief and Exhibit 1022.

IPR2023-00529
Patent 7,653,414 B2

For PETITIONER:

Matthew Hopkins
Barry K. Shelton
WINSTON & STRAWN LLP
mhopkins@winston.com
bshelton@winston.com

For PATENT OWNER:

James Hannah
Aaron M. Frankel
Jeffrey H. Price
Jenna Fuller
Jeffrey Eng
KRAMER LEVIN NAFTALIS & FRANKEL LLP
jhannah@kramerlevin.com
afrankel@kramerlevin.com
jprice@kramerlevin.com
jfuller@kramerlevin.com
jeng@kramerlevin.com