

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DURATION MEDIA LLC,  
Petitioner,

v.

RICH MEDIA CLUB LLC,  
Patent Owner.

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IPR2023-00953  
Patent 11,443,329 B2

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Before KARL D. EASTHOM, MICHAEL J. FITZPATRICK, and  
JASON M. REPKO, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

On November 6, 2023, Patent Owner, Rich Media Club LLC, filed a Motion to Seal, requesting to seal Exhibit 2009 and to enter the Board's Default Protective Order. Paper 28 ("Mot. To Seal"). Patent Owner represents that Petitioner, Duration Media LCC, does not oppose the Motion; nor has Petitioner filed a brief in opposition. Mot. To Seal 2. The Motion to Seal seeks to seal Exhibit 2009. *Id.* We have yet to rule on the Motion to Seal, and Exhibit 2009 remains provisionally sealed at this time.

On the same day, November 6, 2023, Patent Owner also filed a Motion for Addition Discovery under 37 C.F.R. § 42.51(b)(2)(i). Paper 29 ("Disc. Mot."). In the Motion, which was filed publicly, Patent Owner discusses certain aspects of Exhibit 2009. Disc. Mot. at 2. Petitioner publicly filed an Opposition to the Motion, which also discusses certain aspects of Exhibit 2009. Paper 31 ("Opp."), at 4. On November 28, 2023, we publicly entered a Decision, granting in part Patent Owner's Motion for Additional Discovery. Paper 34 ("Dec."). In doing so, we discussed Exhibit 2009 but only to the extent that it was publicly discussed by either party. *See* Dec. 4 n.3.

Sealing Exhibit 2009 in its entirety, as the Motion to Seal requests, would be inconsistent with the parties' discussion of certain aspects of Exhibit 2009 in briefs publicly filed in this *inter partes* review. Only "confidential information" is protected from disclosure. *See* 35 U.S.C. § 316(a)(7) ("The Director shall prescribe regulations . . . providing for protective orders governing the exchange and submission of *confidential information.*" (emphasis added)); 37 C.F.R. § 42.54 ("The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information."); *see also Argentum Pharmaceuticals LLC v.*

*Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative) (“[A] movant to seal must demonstrate adequately 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.”).

However, we will not deny the Motion to Seal before first affording Patent Owner the opportunity to refine the relief requested.

Accordingly, it is

ORDERED that Patent Owner may file an amended motion to seal that avoids the inconsistency discussed above within two weeks of this Order (for example, such motion may seek to seal Exhibit 2009 while including a public version of Exhibit 2009 that is redacted only to the extent good cause supports);

FURTHER ORDERED that, if Patent Owner chooses to not file an amended motion to seal within two weeks of this Order, counsel for Patent Owner shall inform the Board of that choice via email to [Trials@uspto.gov](mailto:Trials@uspto.gov) while copying counsel for Petitioner.

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PETITIONER:

Kevin Greenleaf  
Joel Bock  
DENTONS US LLP  
kevin.greenleaf@dentons.com  
joel.bock@dentons.com

PATENT OWNER:

Ragnar Olson  
David Berten  
GLOBAL IP LAW GROUP, LLC  
rolson@giplg.com  
dberten@giplg.com