

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DURATION MEDIA LLC,
Petitioner,

v.

RICH MEDIA CLUB LLC,
Patent Owner.

IPR2023-00953
Patent 11,443,329 B2

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

FITZPATRICK, *Administrative Patent Judge*.

ORDER
Petitioner's and Patent Owner's Motions to Seal
37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

A. Procedural Background

There are multiple pending motions to seal.

Patent Owner, Rich Media Club LLC, filed three Motions to Seal. Papers 28, 40, 68. Of these, Patent Owner's first Motion to Seal (Paper 28) was dismissed pursuant to Patent Owner's request. *See* Paper 43. Petitioner, Duration Media LLC, filed one Motion to Seal. Paper 39. Thus, there are three pending motions to seal, which this Order resolves.

In its first (and now dismissed) Motion to Seal, Patent Owner represented that the parties had agreed on entry of the Board's Default Protective Order. Paper 28, 2; *see also id.* at appendix (copy of the Board's Default Protective Order).

Then, in Petitioner's Motion to Seal, Petitioner sought entry of multiple "agreed-upon protective orders," namely the Board's Default Protective Order that was appended to Patent Owner's first Motion to Seal and also a Modified Protective Order that was appended to Petitioner's Motion to Seal. Paper 39, 2; *see also id.* at appendix (providing a Modified Protective Order with indications for deviations from the Default Protective Order). Patent Owner likewise sought entry of both protective orders. Paper 40, 2.

During the hearing for oral arguments, the Board advised the parties that only one protective order would be entered and asked the parties to follow up after the hearing with a stipulation as to which of the two protective orders the parties would jointly seek. Paper 70, 5:25–6:19. The Board is unaware of any further communication regarding this issue.

The proposed Modified Protective Order deviates from the Default Protective Order merely by creating a second level of protection for documents marked “Attorneys Eyes Only.” Paper 39 (appendix page 2). Because the parties have agreed upon both protective orders, and because the proposed Modified Protective Order includes all of the provisions of the Default Protective Order and differs only in creating a second level of protection, we consider below entry of the proposed Modified Protective Order and not the Default Protective Order.

B. Governing Law

Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public. However, the same statute specifically contemplates exceptions to this default rule and instructs the Director to create regulations providing for the sealing of documents and entry of protective orders. *Id.* at § 316(a)(1) and (6). The Director has done so via 37 C.F.R. §§ 42.14 and 42.54, which we apply below.

II. MODIFIED PROTECTIVE ORDER

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. Consolidated Trial Practice Guide (“Consolidated Practice Guide”)¹ at 19–20, 107. The Consolidated Practice Guide sets forth specific

¹ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

guidelines on proposing a protective order and provides a Default Protective Order. *See id.* at 19–20, 107–122. 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. The proposed Modified Protective Order merely includes a second level of protection for documents marked “Attorneys Eyes Only.” Paper 39 (appendix page 2).

After reviewing the proposed Modified Protective Order, we determine that it is consistent with the integrity and efficient administration of the proceedings. Accordingly, we enter the agreed-upon Modified Protective Order, which is appended to Paper 39.

III. MOTIONS TO SEAL

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

A. Petitioner’s Motion to Seal (Paper 39)

Petitioner moves to seal the unredacted versions of the Patent Owner Response (Paper 35), Exhibit 2045, and Exhibit 2055. Paper 39, 2. The record includes publicly available redacted versions of the same documents, using a different paper number for the public version of the Patent Owner Response (i.e., Paper 42) and the same exhibit numbers for the public versions of the exhibits (i.e., Ex. 2045 and Ex. 2055). Patent Owner has not opposed the Motion.

Petitioner argues that good cause exists for sealing the redacted information contained in these documents because it constitutes “confidential commercial and financial information.” Paper 39, 3. Not only has Patent Owner not opposed the Motion, Patent Owner also moved to seal the unredacted versions of the Patent Owner Response (Paper 35) and Exhibit 2045. Paper 40, 2. Having reviewed the redacted information, we are persuaded that “good cause” exists to seal the same.

B. Patent Owner’s Second Motion to Seal (Paper 40)

By this motion, Patent Owner moves to seal the unredacted version of the Patent Owner Response (Paper 35), Exhibit 2026, and Exhibit 2045. Paper 40, 2. Petitioner has not opposed the Motion.

We have already determined that good cause exists to seal the unredacted version of the Patent Owner Response (Paper 35) and Exhibit 2045.

Patent Owner argues that good cause exists for sealing the redacted information contained in Exhibit 2026 because it is Patent Owner’s “cumulative revenue.” Paper 40, 2. The record includes a publicly available redacted version of Exhibit 2026. Having reviewed the redacted information, we are persuaded that “good cause” exists to seal the information redacted for only one of the two redactions. Specifically, good cause exists for sealing the information redacted from paragraph 6 of Exhibit 2026 but not the information redacted from paragraph 11. The information redacted from paragraph 11 of Exhibit 2026 is not revenue information, and Petitioner does not explain why it should be redacted or sealed.

As set forth below, to avoid unsealing of Exhibit 2026 in its entirety, a corrected public version of the same must be filed that removes the redaction to paragraph 11.

C. Patent Owner's Third Motion to Seal (Paper 68)

By this motion, Patent Owner moves to seal the unredacted version of Patent Owner's hearing demonstratives (Paper 66) and Exhibits 1020 and 1022 in their entirety. Paper 68, 2. Petitioner has not opposed the Motion.

Patent Owner argues that good cause exists for sealing the information redacted in the publicly filed version of Patent Owner's demonstratives (i.e., Paper 69) because it reflects confidential information from both the Patent Owner and Petitioner. Paper 68, 2. Having reviewed the redacted information, we are persuaded that "good cause" exists to seal the unredacted version of Patent Owner's demonstratives (i.e., Paper 66).

Patent Owner asserts that good cause exists for sealing Exhibits 1020 and 1022 in their entirety but does not explain why. Patent Owner merely states that "Exhibits 1020 and 1022 to the extent they contain Patent Owner[']s confidential revenue information should be kept under seal." Paper 68, 2. This is insufficient to establish good cause.

As set forth below, to avoid unsealing of Exhibits 1020 and 1022 in their entirety, a new motion to seal must be filed that establishes good cause. Additionally, if only some of the information is confidential, public versions of Exhibits 1020 and 1022 must be filed with redactions of only that which is truly confidential.

Accordingly, it is

ORDERED that the proposed Modified Protective Order appended to Paper 39 is entered;

FURTHER ORDERED that Petitioner's Motion to Seal (Paper 39) is granted; the unredacted versions of the Patent Owner Response (Paper 35), Exhibit 2045, and Exhibit 2055 shall remain sealed indefinitely;

FURTHER ORDERED that Patent Owner's second Motion to Seal (Paper 40) is granted-in-part and denied-in-part; the unredacted version of the Patent Owner Response (Paper 35) and Exhibit 2045 shall remain sealed indefinitely; the unredacted version of Exhibit 2055 shall remain sealed indefinitely so long as, within 10 business days of this Order, a public version of the same is filed with the redaction from paragraph 11 removed; and

FURTHER ORDERED that Patent Owner's third Motion to Seal (Paper 68) is granted-in-part and denied-in-part; Exhibits 1020 and 1022 shall remain sealed indefinitely so long as, within 10 business days of this Order, a satisfactory motion to seal them is filed, along with public versions of the same if warranted.

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Patent 11,443,329 B2

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