

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOTOROLA SOLUTIONS, INC.,
Petitioner,

v.

STA GROUP LLC,
Patent Owner.

IPR2023-01292
Patent 7,324,802 B2

Before MICHAEL J. FITZPATRICK, DAVID C. McKONE, and
KEVIN C. TROCK, *Administrative Patent Judges*.

McKONE, *Administrative Patent Judge*.

ORDER
Granting Motion to Seal and Entry of Protective Order
37 C.F.R. §§ 42.14 and 42.54

I. INTRODUCTION

Motorola Solutions, Inc. (“Petitioner”) moves to seal Exhibit 1035, which contains excerpts of the Expert Report of Dr. Robert Akl, D.SC. Regarding Infringement of U.S. Patent No. 7,324,802 in the related District Court litigation, *STA Group LLC v. Motorola Solutions, Inc.*, Case No. 2:22-cv-00381 (E.D. Tex.). Paper 23. The Motion includes a proposed protective order that appears to be substantially similar to the Board’s default protective order. Paper 23, Attachment A (also submitted as Exhibit 1030). Petitioner represents that its Motion is unopposed. *Id.* at 2 n.1.

For the reasons we discuss below, we grant Petitioner’s Motion to Seal and enter the default protective order in this proceeding.

A. STANDARD OF REVIEW

There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review that determines the patentability of claims in an issued patent and, therefore, impacts the rights of the public. *See* 37 C.F.R. § 42.14. Under 35 U.S.C. § 316(a)(1), the default rule is that all papers and exhibits filed in an *inter partes* review are open and available for access by the public. *See also* Rule 42.14. A party may, however, file papers or exhibits under seal together with a motion to seal, whereupon the papers or exhibits will be treated as sealed pending the outcome of the motion. *Id.*

Only “confidential information” may be protected from disclosure. 35 U.S.C. § 316(a)(7) (2018) (“The Director shall prescribe regulations . . . providing for protective orders governing the exchange and submission of confidential information.”). In that regard, the Patent Trial and Appeal

Board Consolidated Trial Practice Guide (Nov. 2019) (“Trial Practice Guide”),¹ provides the following:

The rules aim to 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.

. . . .

2. Confidential Information: The rules identify 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. 37 C.F.R. § 42.54.

Trial Practice Guide at 19.

As the party seeking to protect its confidential information, the movant has the burden of proof to show that it is entitled to the requested relief. *See* 37 C.F.R. § 42.20(c) (2021). The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. A motion to seal must include a proposed protective order and a certification that the movant has in good faith conferred or attempted to confer with the other party in an effort to come to an agreement as to the scope of the proposed protective order. *See id.*

In *Argentum Pharmaceuticals LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative), the Board set forth examples of factors it may consider when determining whether the moving party has shown good cause to seal confidential information, including

- (1) the information sought to be sealed is truly confidential,
- (2) a concrete harm would result upon public disclosure,

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

(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 at 4.

B. ANALYSIS

According to Petitioner’s Motion to Seal, Exhibit 1035 “contains confidential information regarding the operation of Petitioner’s products accused of infringement in the related district court litigation,” and, thus, “consists of confidential technical information related to Petitioner’s products.” Paper 23, 3. Petitioner contends that its “arguments are all publicly-available in its reply, so the public’s understanding of the issues in this proceeding would not be substantially reduced by the request to seal Exhibit 1035.” *Id.* at 4.

Petitioner argues that it needs to rely on this information “as evidence of Patent Owner’s inconsistent positions in this proceeding and the district court litigation in its contemporaneously filed Petitioner’s Reply to Patent Owner’s Response.” *Id.* at 1; *accord id.* at 3 (“Good cause exists for entry of a Protective Order because Petitioner seeks to rely on Exhibit 1035 as evidence of inconsistencies in Patent Owner’s positions in this proceeding and the district court litigation.”).²

Petitioner represents that “counsel for Petitioner and counsel for Patent Owner met and conferred, and Patent Owner does not oppose the

² We take no position in this Order as to whether Patent Owner’s positions in District Court are inconsistent with those advanced in its Patent Owner Response.

entry of the default protective order and Petitioner’s motion to seal.”

Paper 23, 2 n.1.

After reviewing Exhibit 1035, we agree that it contains sensitive information regarding the operation of Petitioner’s products. We accept Petitioner’s representations that there is a genuine need to rely on this evidence to show inconsistencies in Patent Owner’s District Court and Patent Owner Response positions. Based on these particular circumstances, we find good cause to *grant* the Motion to Seal Exhibit 1035.

In addition, based on our review of Petitioner’s proposed protective order, it appears to be substantially the same as the Board’s default protective order. *See* Trial Practice Guide at 117–22. Because the parties agree that their proposed protective order will govern the disclosure of the information filed under seal, we enter Petitioner’s proposed protective order in this case.

II. ORDER

Accordingly, it is hereby:

ORDERED that Petitioner’s Motion to Seal Exhibit 1035 (Paper 23) is *granted*;

FURTHER ORDERED that Petitioner’s proposed protective order (Paper 23, Attachment A) is entered into this case; and

FURTHER ORDERED that Exhibit 1035 will continue to be maintained under seal.

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PETITIONER:

Eliot D. Williams
Michael Knierim
Clarke W. Stavinoha
Matthew Thompson
BAKER BOTTS L.L.P
eliot.williams@bakerbotts.com
michael.knierim@bakerbotts.com
clarke.stavinoha@bakerbotts.com
matthew.thompson@bakerbotts.com

PATENT OWNER:

Jason A. Engel
Katherine L. Allor
Nolan R. Hubbard
Samuel P. Richey
Kyle Kantarek
K&L GATES LLP
jason.Engel.PTAB@klgates.com
katy.allor.PTAB@klgates.com
nolan.hubbard.PTAB@klgates.com
samuel.richey.PTAB@klgates.com
kyle.kantarek@kirkland.com