

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRIME TIME TOYS LLC, PRIME TIME TOYS LTD., and
EASEBON SERVICES LTD.,
Petitioner,

v.

SPIN MASTER, INC.,
Patent Owner.

IPR2023-01339
Patent 8,640,683 B2

Before HYUN J. JUNG, NEIL T. POWELL, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

DOUGAL, *Administrative Patent Judge*.

DECISION

Granting Motions to Seal and Entering Protective Order
37 C.F.R. §§ 42.5, 42.14, 42.54

I. Background

As discussed in more detail below, Patent Owner filed a Motion to Seal (Paper 21), and then Petitioner filed a Motion to Seal (Paper 26). Neither of the motions is opposed. The parties also jointly request entry of a protective order. Paper 21, 1–3; Paper 26, 1.

Patent Owner requests sealing of the Patent Owner Response and Exhibits 2015, 2032, 2043, 2046, 2068–70, 2072–75, 2077, 2079, 2081, 2082, 2084, and 2115. Paper 21, 11. Patent Owner filed sealed versions of the noted exhibits and a public version of Exhibits 2015 and 2046. Patent Owner filed public (Paper 20) and sealed (Paper 19) versions of the Patent Owner Response.

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, all papers filed in an *inter partes* review are open and available for access by the public. A party, however, may file a motion to seal confidential information, and the information is sealed pending the outcome of the motion. 37 C.F.R. § 42.54. As set forth in the Board’s Consolidated Trial Practice Guide,¹ “[t]he 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.” TPG 19.

We have reviewed the documents Patent Owner seeks to seal, and we agree the documents contain confidential information, such as financial

¹ USPTO, Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019, <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“TPG”).

information, and business strategy. *See* Paper 21, 8–11. Moreover, Patent Owner is sufficiently discrete in its request to seal these documents by submitting redacted copies of many of the documents. Patent Owner’s treatment of the confidential information effectively balances its commercial and legal interests against the Board’s strong public policy that favors making information filed in *inter partes* review proceedings open to the public.

Accordingly, we grant Patent Owner’s Motion to Seal (Paper 21) as Patent Owner has shown good cause.

As a reminder, confidential information that is subject to a protective order ordinarily becomes public forty-five (45) days after final judgment in a trial. TPG 21–22. After final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public in accordance with 37 C.F.R. § 42.56.

II. Petitioner’s Motion to Seal

Petitioner’s Motion to Seal requests sealing of Petitioner’s Reply and Exhibit 1036.² Paper 26, 2–3. Petitioner filed public (Paper 25) and sealed (Paper 24) versions of the Reply. Petitioner filed public and sealed versions of Exhibit 1036.

We have reviewed the documents Petitioner seeks to seal, and we agree the documents contain confidential information, such as financial information, and business strategy. Paper 26, 2. Moreover, Petitioner is sufficiently discrete in their request to seal these documents by submitting

² We note that the record includes additional documents (Paper 1, Ex. 1021) filed by Petitioner under seal for which there is no accompanying Motion to Seal.

redacted copies of the documents. The treatment of the confidential information effectively balances its commercial and legal interests against the Board's strong public policy that favors making information filed in *inter partes* review proceedings open to the public.

Accordingly, we grant Petitioner's Joint Motion to Seal (Paper 26) as Petitioner has shown good cause.

As a reminder, confidential information that is subject to a protective order ordinarily becomes public forty-five (45) days after final judgment in a trial. TPG 21–22. After final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public in accordance with 37 C.F.R. § 42.56.

III. Protective Order

The parties submitted a proposed protective order which they jointly propose entering. Paper 21, 1–3; Paper 26, 1; Ex. 2200 (proposed protective order).

The parties have identified how the proposed protective order departs from the Board's default protective order set forth in Appendix B of the Board's Consolidated Trial Practice Guide. Paper 21, 1–3; Ex. 2201 (redline of default protective order). In particular, it is stated that the proposed protective order

makes modest modifications to the Board's default protective order for good cause. In this IPR, the parties both intend to re-file and rely on confidential materials that have already been filed under seal in a parallel proceeding before the International Trade Commission ("ITC"). The modifications to the proposed protective order are to ensure that the "Confidential Business Information" ("CBI") filed in the ITC proceeding, including

third-party confidential information as laid out below, receives comparable and compatible protection in this IPR.

Paper 21, 1. Upon review of the protective order, we find the proposed protective order acceptable.

IV. ORDER

It is, ORDERED that

The Motions to Seal (Papers 21, 26) are *granted*;

The Joint Motion for Entry of Protective Order (Papers 21, 26) is *granted*;

The proposed protective order (Ex. 2200) submitted jointly by the parties is hereby entered; and

This protective order shall govern the conduct of the proceeding unless otherwise modified.

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For PETITIONER:

Kenneth George
Brian Comack
kgeorge@arelaw.com
bcomack@arelaw.com

For PATENT OWNER:

Kenneth Darby
Linhong Zhang
kdarby@fr.com
lwzhang@fr.com

Jennifer Bailey
jennifer.bailey@eriseip.com