UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES LTD and fuboTV MEDIA INC.,

Petitioner,

v.

DISH TECHNOLOGIES L.L.C.,

Patent Owner.

Case IPR2024-00043[1]

Patent 11,677,798

PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION FOR ENTRY OF DEFAULT PROTECTIVE ORDER AND MOTION TO SEAL

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[1] fuboTV Media Inc., which filed a petition in IPR2024-00901, has been joined as a petitioner in this proceeding.

I. Introduction

As set forth in Patent Owner DISH Technologies L.L.C. ("PO's") Motion for Entry of Default Protective Order and to Seal (Paper 19, "Motion"), there is good cause to seal Exhibits 2006, 2031, 2032, 2033, 2049, 2050, 2055, 2056, 2057, 2071, 2078, and 2079, which are sensitive, non-public corporate communications about the business operations and technical capabilities of third-parties, confidential agreements with third-parties, or confidential testimony discussing those materials.[2] Furthermore, PO has taken reasonable steps to "maintain a complete and understandable public record" (*see* 37 C.F.R. § 42.14), including by (1) de-designating Exhibit 2059 in its entirety and (2) creating redacted, public versions of Exhibits 2006, 2031, 2032, 2033, 2057, 2071, and 2078. All told, PO has filed public versions of ***eight*** of the ***thirteen*** documents it sought to seal, leaving only the most "truly sensitive" confidential business information of third parties subject to the pending Motion.

Petitioner's Opposition (Opp.) was filed before PO unsealed and filed redacted public versions of these exhibits, and thus is not responsive to PO's reasonable de-designation efforts. Petitioner's arguments miss the mark for the central reason that Petitioner overlooks that these materials contain sensitive

[2] PO withdraws its request to seal Exhibit 2059, which is now publicly filed. *See* Paper 24 (Board Summary of August 29, 2024, Conference Call) at 3.

business and technical information of ***third-parties*** which PO is obligated to keep confidential.

II. Good Cause Exists for Sealing Confidential Information

The confidential information in PO's Exhibits is identified in the table below. While PO's Motion identified categories of sensitive information (Mot., 2-4), this table includes more specific descriptions of the information sought to be sealed in each document, along with a description of PO's reasonable efforts to create public versions while redacting only the most sensitive parts.

Exhibit	Content	Confidential Information	Redactions
Exhibit 2006	Declaration of Dr. Kevin Jeffay In Support of PO's Response	Discussion of third-party confidential business information and technical product capabilities.	Redactions to four paragraphs. The remaining 254 paragraphs have been filed in the public record.
Exhibit 2031	Email string between Move Networks and Level3	Communications regarding third-party's intellectual property strategy.	Redactions limited to two paragraphs.
Exhibit 2032	Email string between Move Networks and Microsoft	Communications regarding third-party's confidential business units and unrelated business transactions.	Redactions throughout but only to the extent necessary to protect secret information.
Exhibit 2033	Email string between Move Networks and Microsoft	Communications regarding confidential technical capabilities of third-party's products.	Redactions throughout but only to the extent necessary to protect secret information.
Exhibit 2049	Email between Move Networks and Microsoft	Communication regarding third-party's confidential technology.	Single-paragraph email, not amenable to redaction.

Exhibit 2050	Move Networks / Microsoft Term Sheet	Confidential term sheet for proposed transaction.	Entire document is confidential.
Exhibit 2055	Move / Apple Non-Disclosure Agreement	Terms governing conduct of confidential project.	Entire document is confidential.
Exhibit 2056	Move / Apple Non-Disclosure Agreement	Terms governing conduct of confidential project.	Entire document is confidential.
Exhibit 2057	Email string between Move Networks and Microsoft	Communications regarding competitive intelligence and technical capabilities of third-party's products.	Redactions throughout but only to the extent necessary to protect secret information.
Exhibit 2071	Email string between Move Networks and Microsoft	Communications regarding confidential technical capabilities of third-party's products.	Redactions throughout but only to the extent necessary to protect secret information.
Exhibit 2078	Email string between Move Networks and Microsoft	Communications regarding third-party's confidential business plans.	Redaction to one paragraph.
Exhibit 2079	Email string between Move Networks and Microsoft	Communications regarding technical integration involving confidential technology.	Entire document is confidential.

The confidential information in these exhibits consists of commercially sensitive business information, confidential communications, and confidential agreements with third-parties Microsoft Corporation ("Microsoft"), Level3 Communications, Inc., ("Level 3"), and Apple, Inc. ("Apple"). PO also certifies that, to the best of PO's knowledge, this information has not been published or otherwise made public. The Board routinely seals such materials. *See Grimco, Inc.,*

v. Principal Lighting Grp., LLC, IPR2021-00968, Paper 46 at 3-4 (PTAB Nov. 18, 2022).

Good cause exists to seal and keep this information confidential for the additional reason that it contains information disclosed to PO by third-parties under agreements that require PO to maintain the information in secret. For example, Exhibits 2055 and 2056 are, themselves, "Non-Disclosure Agreement[s]" which prohibit public dissemination of secret project details not generally known to the public. Similarly, Exhibit 2050 expressly references a "Non-Disclosure Agreement" between Move and Microsoft. *See* EX2050 at 1. Thus, each of the materials listed above contain information that was disclosed to PO with the understanding that such information would be kept secret. Moreover, PO's arguments are all publicly-available in its POR, so the public's understanding of the issues in this proceeding would not be substantially reduced by the request to seal these supporting exhibits.

III. Petitioner's Arguments Are Flawed

Petitioner contends that "DISH does not point to any particular information in these documents that is truly ***confidential to DISH***." Opp., 2 (emphasis added). However, where PO's confidential content is at issue, PO has largely ***already*** publicly filed that information, erring on the side of public disclosure rather than confidentiality. For example, Exhibits 2011 and 2012 are PO's internal (through their prior acquisition of Move) technical documents that it would ordinarily

consider confidential. But PO did not seek to seal those materials in the first instance. PO does not enjoy the same freedom to publicly disclose otherwise confidential information of ***third parties*** to whom it owes a duty of confidentiality. Petitioner overlooks those obligations.

In addition, contrary to Petitioner's contention that no "concrete harm would result" (Opp., 3), public disclosure of this information would competitively harm the third-parties whose confidential information is at issue. And PO's reputation would be harmed by forced disclosure of information subject to an NDA.

Similarly, Petitioner's contention that PO lacks a "genuine need" to rely on these materials is unavailing. Opp., 4. The confidential exhibits provide evidentiary support for assertions and opinions on issues which PO bears the burden on, and Petitioner admits that PO relies on each of the confidential exhibits "at least once" for that purpose. *Id.* Petitioner provides no case law supporting its implied assertion that PO is required to show ***repeated*** reliance on confidential materials to demonstrate that they should be sealed.

IV. Conclusion

PO thus respectfully submits that good cause exists for entering the proposed Default Protective Order in this proceeding, and to seal Exhibits 2006, 2031, 2032, 2033, 2049, 2050, 2055, 2056, 2057, 2071, 2078, and 2079.

Dated: September 9, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on September 9, 2024, a complete and entire copy of the **PETITIONER'S REPLY IN SUPPORT OF ITS MOTION TO SEAL AND MOTION FOR ENTRY OF DEFAULT PROTECTIVE ORDER** was provided via email to the Petitioner by serving the correspondence email addresses of record as follows:

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