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Paper 33
Entered: October 3, 2024

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.

IPR2024-00043[1] (Patent 11,677,798 B2)
IPR2024-00044 (Patent 11,470,138 B2)
IPR2024-00045 (Patent 10,469,554 B2)
IPR2024-00046 (Patent 10,951,680 B2)
IPR2024-00146 (Patent 10,469,555 B2)[2]

Before THU A. DANG, JOHN A. HUDALLA, and
JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

HUDALLA, *Administrative Patent Judge*.

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[1] fuboTV Media Inc., which filed petitions in IPR2024-00901, IPR2024-00902, IPR2024-00903, IPR2024-00904, and IPR2024-00905, has been joined as a petitioner in IPR2024-00043, IPR2024-00044, IPR2024-00045, IPR2024-00046, and IPR2024-00146, respectively.

[2] This Order addresses the same issue for the above-identified proceedings. Therefore, we exercise our discretion to issue one order to be filed in each proceeding. The parties are not authorized to use this caption style in any subsequent papers.

ORDER
Granting-in-Part Petitioner's Motions to Seal
Entry of Default Protective Order
37 C.F.R. § 42.54

On July 22, 2024, DISH Technologies L.L.C. ("Patent Owner") filed a Motion to Seal (Paper 19, "Mot.")[3] in conjunction with the filing of its Response (*see* Paper 18) in each of these proceedings.[4] With each motion, Patent Owner seeks to seal Exhibits 2006, 2031, 2032, 2033, 2049, 2050, 2055, 2056, 2057, 2059, 2071, 2078, and 2079. Mot. 1. Patent Owner also seeks entry of the Board's Default Protective Order. *Id.* Aylo Freesites Ltd (hereinafter "Petitioner") filed Oppositions (Paper 23, "Opp.") and Patent Owner filed a Reply in support of each motion (Paper 25, "Reply").

Prior to the filing of each Reply, the panel had a teleconference with the parties to discuss the pending motions to seal, among other things. *See* Paper 24. Patent Owner agreed to take certain actions related to the pending motions to narrow the disputes between the parties. *Id.* at 3–4. We will discuss those actions in further detail below.

The Board may, for good cause, issue an 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

[3] We cite to papers and exhibits in IPR2024-00043. Similar documents were filed in IPR2024-00044, IPR2024-00045, IPR2024-00046, and IPR2024-00146.
[4] Notably, Patent Owner filed its Response publicly and without any restriction. *See* Paper 18.

more parties and must be approved and entered by the Board. Patent Trial and Appeal Board Consolidated Trial Practice Guide 19–20, 107 (Nov. 2019), *available at* http://www.uspto.gov/TrialPracticeGuideConsolidated ("Trial Practice Guide"). The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a Default Protective Order. *See* Trial Practice Guide 19–20, 107–22.

As discussed below, we find that Patent Owner has established good cause to seal certain materials. Thus, for the reasons that follow, we grant-in-part Patent Owner's motions to seal. We also enter the Board's Default Protective Order in each proceeding.

Declaration of Dr. Kevin Jeffay (Ex. 2006)

Patent Owner initially sought to seal the entirety the Declaration of Dr. Kevin Jeffay (Ex. 2006), which supports Patent Owner's Response. Mot. 3–4. As promised at the teleconference, however, Patent Owner subsequently filed a public version of Dr. Jeffay's declaration in which it pared down the scope of its requested protection to certain redactions in four paragraphs. *See* Reply 2; Ex. 2006 (public version). We have reviewed the redacted materials and find them to be tailored narrowly to protect only confidential information. Thus, we grant Patent Owner's motions to seal as to the redacted information in Dr. Jeffay's declaration.

Emails Involving Move Networks (Exs. 2031–2033, 2049, 2057, 2071, 2078, and 2079)

Patent Owner initially sought to seal the entirety of various emails between Move Networks, a predecessor entity of Patent Owner's, and various third parties. Mot. 2–4. Patent Owner has now pared down its request insofar as it has provided redacted versions of Exhibits 2031–2033, 2057, 2071, and 2078. *See* Reply 2–3. Patent Owner contends that Exhibit 2049 is not amenable to redaction and Exhibit 2079 is confidential in its entirety. *See id.* We have reviewed the redacted materials and find them to be tailored narrowly to protect only confidential information. Thus, we grant Patent Owner's motions to seal as to the redacted information in Exhibits 2031–2033, 2057, 2071, and 2078. We also are satisfied by Patent Owner's explanation with respect to Exhibits 2049 and 2079. Thus, we grant Patent Owner's motions to seal as to the entirety of Exhibits 2049 and 2079.

Term Sheet and Non-Disclosure Agreements (Exhibits 2050, 2055, and 2056)

Patent Owner seeks to seal a term sheet (Ex. 2050) and two non-disclosure agreements involving third parties (Exs. 2055, 2056). Mot 2–4; Reply 3. Although Petitioner argues that exhibits such as these "merely contain high level discussions about [Patent Owner's] patents or the long-defunct MOVE player and defunct MOVE entity" (Opp. 2–3), we find them to contain confidential information about non-public business dealings with

third parties. Thus, we grant Patent Owner's motions to seal as to the entirety of Exhibits 2050, 2055, and 2056.

"The Next Generation Video Publishing System" (Ex. 2059)

Although Patent Owner initially sought to seal Exhibit 2059, it has now withdrawn its requests to seal this exhibit. *See* Reply 1 & n.2. Patent Owner also has filed a public version of this document. *See* Ex. 2059. Thus, we dismiss as moot Patent Owner's motions to seal Exhibit 2059.

Entry of Default Protective Order

Patent Owner asks us to enter the Board's Default Protective Order (*see* Ex. 2088) to govern the treatment of confidential information in these proceedings. Mot. 2–3. Petitioner "would be agreeable to entry of the Board's Default Protective Order" if it is necessary. Opp. 1 n.1. Given that we find good cause to seal certain materials, we enter the Board's Default Protective Order in each of these proceedings.

Notice Regarding Expunged Materials

Via emails dated September 10 and 11, 2024, Patent Owner notified us that it had filed updated versions of Exhibits 2031–2033, 2049, 2050, 2055–2057, 2071, 2078, and 2079 in each of these proceedings to comply with the marking requirements of the Default Protective Order. Patent Owner also asked us to expunge the previous versions of these exhibits. Petitioner indicated by return email that it does not oppose these actions.

Accordingly, we have expunged the materials as requested. Patent Owner shall promptly ensure that the record in each proceeding is complete and correct in the wake of these actions.

ORDER

In consideration of the foregoing, it is hereby

ORDERED that the Board's Default Protective Order is entered and shall govern the treatment and filing of confidential information in each of these proceedings;

FURTHER ORDERED that Petitioner's motions to seal the redacted portions of Exhibits 2006, 2031–2033, 2057, 2071, and 2078, and the entirety of Exhibits 2049, 2050, 2055, 2056, and 2079, are *granted*; and

FURTHER ORDERED that Petitioner's motions to seal Exhibit 2059 are *dismissed as moot*.

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