

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
HP INC., DELL INC., DELL TECHNOLOGIES INC.,
ASUSTEK COMPUTER INC., ASUS GLOBAL PTE. LTD.,
Petitioner,

v.

,
Patent Owner.

IPR2024-00456
Patent US 8,612,888 B2

Before GARTH D. BAER, BRIAN D. RANGE, and DAVID COTTA,
Administrative Patent Judges.

BAER, *Administrative Patent Judge.*

ORDER
Granting Petitioner's Unopposed Motions to Seal
37 C.F.R. §§ 42.5, 42.14, 42.54

I. Introduction

On May 29, 2024, Petitioner filed a Request for Entry of Protective Order and Motion to Seal. Paper 12. The Request proposes entry of a Protective Order, filed as Exhibit 1043¹. The Protective Order introduces “an additional level of confidentiality as ‘Confidential—Outside Attorneys’ Eyes Only Material.’” Paper 12, 1. Petitioner seeks to categorize and seal portions of Patent Owner’s Preliminary Response (Paper 11), as well as all of Exhibits 2018–2020, 2025, 2027, 2028, 2032–2034, and 2038–2040 within this new category. *Id.* at 2.

On June 3, 2024, Petitioner filed another Motion to Seal (Paper 14), seeking to seal portions of Petitioner’s Preliminary Reply (Paper 15). Paper 14, 1. Petitioner seeks to classify the redacted portion of the Preliminary Reply under the new “Attorney’s Eyes Only” category. *Id.*

Petitioner’s motions are unopposed (Paper 12, 1; Paper 14, 1). Patent Owner has provided a public, redacted version of Paper 11, in Paper 13. No public versions of the affected Exhibits have been filed.

The new category elaborated in the Protective Order establishes access only by Party Representatives, Experts, Support Personnel, and “employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information.” Ex. 1043 §§ 3, 4. The Protective Order defines two categories of confidential information, as follows:

Confidential information is any information that the designating party believes in good faith is not generally known to others that the designating party (i) would not normally reveal to third

¹ Petitioner also filed Ex. 1042, a version of Ex. 1043 showing variations from the default protective order.

parties except in confidence or with steps undertaken to maintain that confidence, or (ii) is information protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy.

Confidential Outside Attorneys' Eyes Only information is any information that the designating parties believes in good faith is not generally known to others and has significant competitive value, such that the unrestricted disclosure to others, including in-house counsel, would create a substantial risk of serious injury and that the designating party (i) would not normally reveal to third parties except in confidence or with steps undertaken to maintain that confidence, or (ii) is information protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy.

Id. §§ 1, 2.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a). The filing party bears the burden of proof in showing entitlement to the relief requested in a motion to seal. 37 C.F.R. § 42.20(c).

Petitioner indicates “there is good cause for sealing certain portions of Patent Owner’s Preliminary Reply and the entirety of Exhibits 2018–2020, 2025, 2027–2028, 2032–2034, and 2038–2040 pursuant to 37 C.F.R. § 42.51(B)(2)(i) because Petitioner has obligations to maintain the confidentiality of the licensing information referenced therein.” Paper 12, 1–2. “Disclosure of this confidential information could also cause competitive harm to Microsoft and other parties, including because it would disclose confidential licensing terms.” *Id.* at 2.

Petitioner also indicates the

designated portions of Petitioners’ Preliminary Reply for which Petitioners seek to restrict access under an “Attorneys’ Eyes Only” designation are related to documents that contain highly competitively sensitive information related to licensing, including precise license terms and rates that should only be

accessible to persons that qualify under Paragraph 4 of the amended Protective Order.

Paper 14, 2.

According to the Board’s Trial Practice Guide, the Board will presumptively accept the parties’ agreed modifications to the Default Protective Order “if they are consistent with the integrity and efficient administration of the proceedings.” PTAB Consolidated Trial Practice Guide (“TPG”), 115 (November 2019) (<https://go.usa.gov/xpvPF>). This includes adding additional tiers or categories of confidentiality “as long as they are reasonable and adequately define what types of materials are to be included in the additional categories.” *Id.* at 115–116. “The Board will not accept overly inclusive definitions that encourage the parties to categorize all or most of their discovery materials as ‘Attorneys’ Eyes Only.’” *Id.* at 116.

The parameters of the new category of materials in the Protective Order are consistent with the TPG guidelines, and the documents sought to be protected cover confidential material, in accordance with TPG guidelines.

Accordingly, we grant Petitioner’s Request to enter the proffered Protective Order, and grant Petitioner’s Motions to seal.

Finally, we remind the parties that any confidential information that is relied upon in a Board decision will be made public in order to maintain a complete and understandable public record of this proceeding. See TPG at 21–22. In addition, any confidential information will ordinarily become public 45 days after a final judgment in this proceeding. *Id.* A party seeking to maintain the confidentiality of such information may file a motion to expunge the information prior to its becoming public. *Id.* (citing 37 C.F.R. § 42.56).

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ORDER

For the foregoing reasons, it is hereby:

ORDERED that Petitioner's Request for Entry of a Protective Order is *granted*;

FURTHER ORDERED that Petitioner's Motions to seal Papers 11 and 15, as well as Exhibits 2018–2020, 2025, 2027, 2028, 2032–2034, and 2038–2040 are *granted*.

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