

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.

LITLE LLC,
Patent Owner.

IPR2024-00457
Patent 9,880,715 B2

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

RANGE, *Administrative Patent Judge.*

ORDER

Granting-in-Part Petitioner's Request for Entry of Protective Order
and Motion to Seal
37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

Petitioner filed a Request for Entry of Protective Order and Motion to Seal Pursuant to 37 C.F.R. §§ 42.14 & 42.54. Paper 12 (“Motion”). Petitioner’s Motion seeks to enter Petitioner’s proposed modified Protective Order (Ex. 1033)¹ and to seal portions of Patent Owner’s Preliminary Response (Paper 11) as well as Exhibits 2018–2020, 2023, 2025, 2032–2034, 2038, and 2039. Petitioner represents that Patent Owner does not oppose the Motion. Paper 12, 1.

For the reasons discussed below, we *grant-in-part* Petitioner’s Motion.

II. PETITIONER’S MODIFIED PROTECTIVE ORDER

The Board may, for good cause, issue a protective 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 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) (“Trial Practice Guide”).² 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, 107–122. The parties may propose modifications to the Default Protective Order and the Board will generally accept such proposed changes if they are consistent with the

¹ Petitioner filed a redline comparison between Petitioner’s proposed modified Protective Order and the Board’s Default Protective Order as Exhibit 1032.

² Available at <http://www.uspto.gov/TrialPracticeGuideConsolidated>.

integrity and efficient administration of the proceedings. *Id.* at 115. For example, the parties may agree to provide additional tiers or categories of confidential information, such as “Attorneys’ Eyes Only,” and the Board will presumptively accept agreed-to changes that provide additional 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.

Petitioner seeks to modify the Board’s Default Protective Order to “introduce an additional level of confidentiality as ‘CONFIDENTIAL—OUTSIDE ATTORNEYS’ EYESE ONLY MATERIAL.’” Paper 12, 1.

We observe that Petitioner’s modified Protective Order differs from the Default Protective Order in that it provides an additional category of confidential information. Ex. 1032. After reviewing the proposed modifications to the Default Protective Order, we determine that the changes are consistent with the integrity and efficient administration of the proceedings. Accordingly, we *grant* Petitioner’s request to enter Petitioner’s modified Protective Order.

III. MOTION TO SEAL

Petitioner moves to seal the confidential version of Patent Owner’s Preliminary Response (Paper 11) (public version in Paper 13), as well as Exhibits 2018–2020, 2023, 2025, 2032–2034, 2038, and 2039.

The record of an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C.

§ 316(a)(1); 37 C.F.R. § 42.14. Only “confidential information” may be

protected against public disclosure. 35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54. The Board observes a strong public policy in favor of making information filed in *inter partes* review proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes a sufficient showing that

(1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (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, Paper 27 at 3–4; *see also Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB April 6, 2015) (requiring a showing that information has not been “excessively redacted”).

As Petitioner set forth in the Motion, we find that the material sought to be redacted from Patent Owner’s Preliminary Response as well as the material sought to be sealed in Exhibits 2018, 2020, 2023, 2025, 2032–2034, 2038, and 2039 largely relates to “licensing, including precise license terms and rates” and that “[d]isclosure of this confidential information could also cause competitive harm to Microsoft and other parties.” Paper 12, 2. We find that good cause exists to seal the designated portions of Patent Owner’s Preliminary Response as well as Exhibits 2018, 2020, 2023, 2025,

2032–2034, 2038, and 2039 because this information contains confidential business information.

With respect to Exhibit 2019, however, we do not find this exhibit contains confidential business information, nor does this exhibit relate to any licensing agreements. *See* Ex. 2019. Exhibit 2019 includes emails between the parties’ representatives and the PTAB discussing discovery disputes related to these proceedings. As such, we do not find good cause to seal Exhibit 2019. Within fourteen (14) days of this order, either party may file a renewed motion to seal Exhibit 2019 that establishes why Exhibit 2019 should be sealed based upon the *Argentum* factors. Alternatively, the parties may consider filing, within fourteen (14) days, a redacted version of Exhibit 2019 and file a renewed motion to seal that establishes why the redacted information should be sealed based upon the *Argentum* factors.

IV. ORDER

Accordingly, it is

ORDERED that Petition’s Motion to Seal is *granted-in-part* with respect to Patent Owner’s Preliminary Response (Paper 11) and Exhibits 2018, 2020, 2023, 2025, 2032–2034, 2038, and 2039;

FURTHER ORDERED that Petitioner’s Motion to Seal is *denied without prejudice* with respect to Exhibit 2019 and Exhibit 2019 is unsealed;

FURTHER ORDERED that either party may file a renewed motion to seal Exhibit 2019 within fourteen (14) days of this order;

FURTHER ORDERED that if neither party files a renewed motion with fourteen (14) days of this order, Exhibit 2019 will be unsealed; and

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FURTHER ORDERED that Petitioner's modified Protective Order
(Exhibit 1033) is entered.

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