

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES LTD,

Petitioner,

v.

DISH TECHNOLOGIES L.L.C.,

Patent Owner.

Case IPR2024-00941

Patent 11,991,234

**PATENT OWNER'S UNOPPOSED MOTION FOR ENTRY
OF DEFAULT PROTECTIVE ORDER AND MOTION TO SEAL**

Pursuant to 37 C.F.R. § 42.54, Patent Owner DISH Technologies L.L.C., hereby requests entry of the Board’s Default Protective Order (“Protective Order”)¹ appended below as Attachment A (and also submitted as Exhibit 2088), and moves to seal Exhibits 2001, 2031, 2032, 2033, 2049, 2050, 2055, 2056, 2057, 2071, 2078, and 2079. Good cause exists to enter the Protective Order and seal the confidential information included in these documents because DISH relies on these documents to support evidence of secondary considerations in its contemporaneously filed Preliminary Response, and the relied-upon documents contain confidential communications and technical, product, and business information of third-parties disclosed to DISH under non-disclosure agreements. 37 C.F.R. § 42.54.

I. Motion for Protective Order

The *Trial Practice Guide* provides that “the 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.” Patent Trial and Appeal Board, *Consolidated Trial Practice Guide*, at 19 (Nov. 2019), <<https://www.uspto.gov/TrialPracticeGuideConsolidated>> (“Trial Practice Guide”). Further, those rules “identify confidential information in a manner consistent with

¹ On September 12, 2024, counsel for Aylo and counsel for DISH met and conferred, and Aylo does not oppose the entry of the default protective order and DISH’s motion to seal.

Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.* (citing 37 C.F.R. § 42.54). The *Trial Practice Guide* sets forth specific guidelines on proposing a protective order and provides a Default Protective Order. *See* Trial Practice Guide, at 19–22, 107–22.

Good cause exists for entry of a Protective Order because DISH seeks to rely on confidential business documents, communications, and information of DISH and certain third parties in evidencing objective indicia of nonobviousness, as relevant to this proceeding.

II. Good Cause Exists for Sealing Confidential Information

The confidential information in Patent Owner’s Exhibits is identified in the table below, 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 2001	Declaration of Dr. Kevin Jeffay In Support of Patent Owner’s Preliminary Response	Discussion of third-party confidential business information and technical product capabilities.	Redactions to four paragraphs. The remaining 239 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	Communications regarding third-party’s	Redactions throughout but only to the extent

	Networks and Microsoft	confidential business units and unrelated business transactions.	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”). Certain other confidential technical information related to MOVE Networks, Inc.’s products and how they are integrated into third parties’ streaming systems is contained in Exhibits 2001 and 2049.

Good cause exists to seal and keep this information confidential for the additional reason that it contains information disclosed to Patent Owner by third-parties under agreements that require Patent Owner 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 Patent Owner with the understanding that such information would be kept secret. The public interest will not be harmed by sealing these documents. *See, e.g., Pinnacle Towers LLC v. Airpowered, LLC*, No. 5:15-cv-81-OC-34PRL, 2015 WL 5897524, at *1 (M.D. Fla. Oct. 7, 2015) (“the terms of confidential agreements oftentimes outweigh the public’s right of access”) (citation and quotation omitted).

Moreover, DISH has filed redacted versions of these exhibits to the greatest extent possible while still satisfying its duty to keep third-party confidential

information secret.² DISH therefore has taken reasonable steps to “maintain a complete and understandable public record,” which further supports sealing. *See* 37 C.F.R. § 42.14.

Additionally, Patent Owner’s arguments are all publicly-available in its preliminary response, 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. Conclusion

For the reasons set forth above, Patent Owner respectfully submits that good cause exists for entering the proposed Default Protective Order in this proceeding, and to seal Exhibits 2001, 2031, 2032, 2033, 2049, 2050, 2055, 2056, 2057, 2071, 2078, and 2079.

Dated: September 12, 2024

/Eliot D. Williams/
Eliot D. Williams (Reg. No. 50,822)
BAKER BOTTS L.L.P.
700 K Street, N.W.
Washington, D.C. 20001
202.639.1334

G. Hopkins Guy III (Reg. No. 35,886)
BAKER BOTTS L.L.P.
1001 Page Mill Road, Bldg. 1, Suite 200
Palo Alto, California 94304-1007
650.739.7500

Ali Dhanani (Reg. No. 66,233)

² DISH has filed redacted, public versions of Exhibits 2001, 2031, 2032, 2033, 2057, 2071, and 2078.

Thomas B. Carter Jr. (Reg. No. 76,040)
BAKER BOTTS L.L.P.
910 Louisiana St.
Houston, TX 77002
713.229.1108

Attorneys for Patent Owner, DISH
Technologies L.L.C.

DEFAULT PROTECTIVE ORDER

The protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL” or “CONFIDENTIAL BUSINESS INFORMATION.”

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

A. Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

B. Party Representatives. Representatives of record for a party in the proceeding.

C. Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

D. In-house counsel. In-house counsel of a party.

E. Support Personnel. Administrative assistants, clerical staff, court reporters, and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements

of the Protective Order by the person they are supporting who receives confidential information.

F. The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those identified above in (d)(2)(A)—(E), shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person after signing the Acknowledgement. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

4. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

A. Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

B. Otherwise using reasonable efforts to maintain the

confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

C. Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

D. Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

A. Documents and Information Filed With the Board.

(i) A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The nonconfidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

B. Documents and Information Exchanged Among the Parties.

Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains its confidentiality.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

7. Standard Acknowledgement of Protective Order. The following form attached as Exhibit A may be used to acknowledge a protective order and gain access to information covered by the protective order:

Standard Acknowledgment for Access to Protective Order Material

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

[Signature]

CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on September 12, 2024, a complete and entire copy of the **PETITIONER’S 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:

Frank M. Gasparo
FMGasparo@Venable.com

Ian G. Paquette
IGPaquette@Venable.com

Philip T. Sheng
PTSheng@Venable.com

Date: September 12, 2024

/Eliot D. Williams/
Eliot D. Williams (Reg. No. 50,822)