

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDTRONIC, INC.,
Petitioner,

v.

ROBERT BOSCH HEALTHCARE SYSTEMS, INC.,
Patent Owner.

Case IPR2014-00488 (Patent 7,769,605 B2)
Case IPR2014-00607 (Patent 7,870,249 B2)¹

Before MIRIAM L. QUINN, STEPHEN C. SIU, and JUSTIN T. ARBES,
Administrative Patent Judges.

ARBES, *Administrative Patent Judge.*

DECISION
Motions to Seal
37 C.F.R. §§ 42.14 and 42.54

¹ Case IPR2014-00691 has been consolidated with Case IPR2014-00607. This Decision addresses issues pertaining to both cases. Therefore, we exercise our discretion to issue a single Decision to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

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Petitioner Medtronic, Inc. (“Medtronic”) and Patent Owner Robert Bosch Healthcare Systems, Inc. (“Bosch”) filed motions to seal certain papers and exhibits in connection with Bosch’s Motion to Terminate in the instant proceedings.² Because the motions to seal did not explain why the material sought to be sealed constituted “confidential information” under 35 U.S.C. § 316(a)(7), we denied the motions without prejudice to the parties each filing a revised motion to seal, and ordered the parties to file a proposed redacted version of the Decision granting Bosch’s Motion to Terminate. Paper 53, 3–5.

The parties then filed a paper in each proceeding titled “Joint Additional Briefing on Motion to Seal.” Paper 55 (“Mot.”). The parties agree that the Decision granting Bosch’s Motion to Terminate “may be made public and propose no redactions thereto,” and agree that the majority of the materials previously filed under seal should be made public. *Id.* at 2. Accordingly, a public version of the Decision is filed concurrently with this paper, and the materials agreed to by the parties will be made public.

Medtronic, however, moves to seal three of the documents previously filed under seal. First, Medtronic argues that its response to Bosch’s requests for production and interrogatory contains “specific details regarding the terms of sale of Cardiocom to Medtronic” that are “secret” and “commercially sensitive.” *Id.* at 2, 4. Bosch originally filed the document under seal in its entirety (Ex. 2078), and Medtronic now provides a redacted version (Ex. 1062) redacting only information pertaining to the sale.

² The parties filed similar papers in both of the instant proceedings. Unless otherwise specified, we refer to the papers and exhibits filed in Case IPR2014-00488 for convenience.

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Second, Medtronic argues that certain portions of the Declaration of Peter Shimabukuro contain “undisclosed details of Medtronic’s acquisition of Cardiocom.” *See* Mot. 4; Ex. 1032 (redacted and unredacted versions).

Third, Medtronic argues that a portion of its Opposition to the Motion to Terminate discusses “terms of Medtronic’s purchase agreement with Cardiocom.” Mot. 2, 4. Medtronic originally filed redacted and unredacted versions of the Opposition (Papers 33 and 34), and now provides a new redacted version (Ex. 1061) that removes all but one of the redactions.

Bosch states that it “takes no position as to whether the purchase agreement is confidential, nor whether if it is confidential that confidentiality is sufficient to outweigh the public interest in an open proceeding,” and does not join in Medtronic’s request that the three documents be sealed. Mot. 5. Bosch did not file an opposition, however, as previously authorized. *See* Paper 53, 5.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a). Medtronic, as movant, bears the burden of proof in showing entitlement to the requested relief, and must explain why the information sought to be sealed constitutes confidential information. *See* 35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.20(c); Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). Upon reviewing the materials sought to be sealed, and Medtronic’s arguments regarding their confidential nature, we are persuaded that good cause exists to seal them. We also note that the redacted portions of the materials appear to be tailored narrowly to only confidential information. As the parties previously agreed to the Board’s Default Protective Order, and provided a copy of the same, the materials will be sealed pursuant to that order.

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In consideration of the foregoing, it is hereby:

ORDERED that Medtronic's motion to seal in each proceeding (IPR2014-00488, Paper 55; IPR2014-00607, Paper 59) is *granted*;

FURTHER ORDERED that the Default Protective Order (IPR2014-00488, Paper 31, Appendix A; IPR2014-00607, Paper 36, Appendix A) is entered and shall govern the treatment and filing of confidential information in the instant proceedings;

FURTHER ORDERED that the following materials are made public, and changed from "Parties and Board Only" to "Public" in the Patent Review Processing System (PRPS):

IPR2014-00488: Papers 32, 37, 45, and 52, Exhibits 1024, 1025, 2080, 2086, and 2088, and the unredacted versions of Exhibits 1030, 1031, 1033, and 1034; and

IPR2014-00607: Papers 35, 41, 49, and 56, Exhibits 1033, 1034, 2092, 2098, and 2100, and the unredacted versions of Exhibits 1039, 1040, 1042, and 1043;

FURTHER ORDERED that the following materials shall remain under seal as "Parties and Board Only" in PRPS:

IPR2014-00488: Paper 34, Exhibit 2078, and the unredacted version of Exhibit 1032; and

IPR2014-00607: Paper 38, Exhibit 2090, and the unredacted version of Exhibit 1041;

FURTHER ORDERED that the redacted version of Exhibit 1032 in Case IPR2014-00488 is renumbered as Exhibit 1063, and the redacted version of Exhibit 1041 in Case IPR2014-00607 is renumbered as Exhibit 1066;³

³ The parties are reminded that "exhibits must be uniquely numbered sequentially." 37 C.F.R. § 42.63(c).

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FURTHER ORDERED that redacted Exhibits 1061 and 1062 in Case IPR2014-00488, and redacted Exhibits 1064 and 1065 in Case IPR2014-00607, are entered; and

FURTHER ORDERED that the following materials are expunged from the record of the respective proceeding:

IPR2014-00488: Papers 30, 33, 38, and 46, and the redacted versions of Exhibits 1030, 1031, 1033, and 1034; and

IPR2014-00607: Papers 34, 37, 42, and 50, and the redacted versions of Exhibits 1039, 1040, 1042, and 1043.

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