

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

K-40 ELECTRONICS, LLC
Petitioner

v.

ESCORT, INC.
Patent Owner

Case IPR2013-00203
Patent 7,999,721

Before GLENN J. PERRY, THOMAS L. GIANNETTI, and
TRENTON A. WARD, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

ORDER
Request to Seal
37 C.F.R. § 42.5

On March 24, 2014, the Board received from Petitioner a request to seal the deposition transcript of Mr. Steve Orr. Paper 19. With the request, Petitioner filed confidential and redacted versions of Mr. Orr's deposition transcript. Exs. 1017 and 1023, respectively. Petitioner's counsel represents that Patent Owner's counsel had designated certain portions of the transcript as containing confidential subject matter. Paper 19. Petitioner's counsel certifies that "repeated attempts were made to confer in good faith with the Patent Owner for the purpose of filing a joint motion and agreement to be bound by the terms of the Default Protective Order. Patent Owner's counsel was presumably unavailable." *Id.*

For the reasons that follow Petitioner's request is denied.

DISCUSSION

The record for an *inter partes* review shall be made available to the public, except that 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. A party may file a motion to seal where the motion contains a proposed protective order, such as the default protective order set forth in the Office Patent Trial Practice Guide. The standard for granting a motion to seal is good cause. 37 C.F.R. § 42.54(a). Here, neither Petitioner nor Patent Owner has filed a motion to seal. Petitioner has styled its paper a "request" rather than a motion. For the purposes of this decision, however, we will treat this request as a motion.

A motion to seal must explain why the information redacted from the non-confidential version of the document is confidential and should not be made publicly available. *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48770 (Aug. 14, 2012). That has not been done here. The burden is on the party claiming confidentiality to show good cause why the confidential (redacted) portion should

not be made publicly available. That burden has not been met. Accordingly, the request is denied.

In light of the foregoing, it is hereby

ORDERED that Petitioner's request to seal the transcript of Mr. Orr's deposition (Ex. 1017) shall be deemed a motion to seal and is denied; and

FURTHER ORDERED that the un-redacted transcript of Mr. Orr's deposition will be designated public within five business days of the entry of this Order.

For PETITIONER:

Greg Gardella

Scott McKeown

OLBON SPIVAK

cpdocketgardella@oblon.com

cpdocketmckeown@oblon.com

For PATENT OWNER:

Thomas W. Humphrey

WOOD HERRON & EVANS, LLP

thumphrey@whe-law.com