

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CORNING OPTICAL COMMUNICATIONS RF, LLC,
Petitioner,

v.

PPC BROADBAND, INC.,
Patent Owner.

Case IPR2014-00736
Patent 6,676,446 B2

Before JAMESON LEE, JOSIAH C. COCKS, and
JACQUELINE WRIGHT BONILLA, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

Decision
Motion to Seal
37 C.F.R. § 42.5

Introduction

The parties filed a Joint Motion to Seal (“Motion to Seal” or “Motion”). Paper 36. It seeks to seal portions of Patent Owner’s Motion to Dismiss Petition (Paper 34), and either portions or the entirety of 12 exhibits referred to in that Motion: Exhibits 2100–2103, 2106–2111, 2017, and 2131. It also seeks entry of a Joint Stipulated Protective Order (Paper 36, Appendix A). The Motion is *granted-in-part* and *denied-in-part*.

Discussion

The Motion to Seal is conclusory. It contains essentially no presentation of specific facts for meaningful analysis. For instance, it states simply that Petitioner has identified certain information as disclosing confidential financial records relating to Petitioner’s commercial activities, or that Petitioner has identified a certain document as disclosing confidential compensation information. Paper 36, Table 1, 1–3. A movant bears a burden of prove. Merely identifying information that a movant believes should be sealed on the basis of confidential information does not establish entitlement to the relief requested.

There does not appear to be specific compensation information in Exhibit 2017 or Exhibit 2100. The information contained in Exhibits 2100, 2102, and 2103 appears to have been excessively redacted. Material is not confidential business information simply because it relates to an activity of a business. In authorizing a Motion to Seal and a Motion to Dismiss Petition for failure to identify all real parties-in-interest, (Paper 32, 2), we stated:

The Joint Motion to Seal must explain adequately why the information sought to be sealed in fact constitutes confidential information that should be sealed. It is not apparent to us why information about which company was invoiced by Petitioner's counsel, which company paid Petitioner's counsel, who are the Officers of a [c]orporation, who attended settlement meetings, and who reviewed or gave instructions to petitioner's counsel constitutes confidential information.

The Motion does not address the points we raised in Paper 32.

We also reviewed the confidential version of Patent Owner's Motion to Dismiss Petition (Paper 34). Nothing contained therein appears to constitute information that should be sealed, in the context of a motion that asserts the Petition has not identified all real parties-in-interest. Also, the engagement letter (Exhibit 2101) already is almost entirely redacted, and it is not apparent why this redacted version should be sealed.

With respect to Exhibits 2106, 2107, and 2108, the Motion to Seal states merely that Patent Owner has identified the information as subject to a protective order in either a Civil Action before a U.S. District Court or an Investigation before the U.S. International Trade Commission (ITC). Paper 36, Table 1, 4–5. That is insufficient. The parties do not represent that the District Court or the ITC has ruled that any such information would be presented for trial in a “sealed” status. We already are at trial. Also, the fact that certain information is subject to a protective order, for instance the default protective order of the Board, does not mean a motion to seal such information automatically would be granted.

With respect to Exhibits 2109, 2110, 2111, and 2131, the Motion to Seal states merely that Patent Owner has identified the information “as being subject to a Mutual Non-Disclosure and Fed. R. Evid. 408 Agreement.”

Paper 36, Table 1, 5–6. The Motion provides no explanation as to how the provisions of Fed. R. Evid. 408 would apply to the underlying facts relating to the documents sought to be sealed, or address whether any exception to the Rule exists. Facts are not presented as to how these exhibits came to be produced. We have been asked to make a ruling in the absence of pertinent facts and reasoning.

Finally, the Motion acknowledges that to grant a motion to seal, the Board must “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.” Paper 36, 4 (citing 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012)). The Motion, however, fails to address the public’s interest and thus also fails to address how a proper balance of all the considerations lead to a complete granting of the Motion.

Conclusion

It is ORDERED that:

1. With respect to the request to enter Joint Stipulated Protective Order, the Motion to Seal is *granted*;
2. With respect to email addresses mentioned, in Table 1 of the Motion to Seal, as contained in Exhibit 2100, the Motion to Seal is *granted*;
3. With respect to all other aspects of the Motion to Seal, directed to a request to seal Patent Owner’s Motion to Dismiss Petition and to seal portions or all of Exhibits 2100–2103, 2106–2111, 2017, and 2131, the Motion to Seal is *denied*, without prejudice to filing a Revised/Renewed Motion to Seal within the time period for requesting rehearing of this decision under 37 C.F.R. § 42.71(d); and

4. Until the period for rehearing of this decision expires or disposition of a timely request for rehearing, under 37 C.F.R. § 42.71(d), the non-public designations of various papers filed in connection with the Motion to Seal will remain unchanged.

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