

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GARMIN INTERNATIONAL, INC. ET AL.
Petitioner

v.

CUOZZO SPEED TECHNOLOGIES LLC
Patent Owner

Case IPR-2012-00001
Patent 6,778,074

Before JAMESON LEE, MICHAEL P. TIERNEY, and JOSIAH C. COCKS,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

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

On March 11, 2013, the patent owner (Cuozzo) filed a Motion to Seal (Paper 33). Petitioner has not yet responded.

There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in an issued patent and

Case IPR 2012-00001
Patent 6,778,074

therefore affects the rights of the public. Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; and a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. Similarly, 37 C.F.R. § 42.14 provides:

The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7)(“The Director shall prescribe regulations -- . . . providing for protective orders governing the exchange and submission of confidential information”). In that regard, note the *Office Trial Practice Guide*, 77 *Fed. Reg.* 48756, 48760 (Aug. 14, 2012), which provides:

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.

* * *

Confidential Information: The rules identify confidential information in a manner consistent with 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. § 42.54.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. Cuozzo as the moving party has the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c).

The entirety of Cuozzo’s motion is reproduced below:

The Patent Owner requests permission to seal the documents contained in Exhibit 3000 of the Patent Owner’s Response and Exhibit 4000 of the Patent Owner’s Motion to Amend under the default protective order set forth in the Office Patent Trial Practice Guide (§ 42.54(a)).

A motion to seal is required to include a proposed protective order and a certification that the moving party has in good faith conferred or attempted to confer with the opposing party in an effort to come to an agreement as to the scope of the proposed protective order for this *inter partes* review. 37 C.F.R. § 42.54. Cuozzo’s motion contains no such order or certification.

Exhibit 3000 and Exhibit 4000 appear to be identical. Each of them is a 71-page compilation of Exhibits A through P of a declaration of inventor Giuseppe A. Cuozzo filed in support of patent owner’s effort to antedate prior art references.

To grant the motion to seal, we need to know why the information sought to be placed under seal constitutes confidential information. Cuozzo has not presented a sufficient explanation as to why any of the 71 pages of information sought to be sealed is confidential information and why there is good cause for granting the motion. Cuozzo has not on this record even represented that the information sought to be sealed constitutes confidential information. Cuozzo has not met its burden of proof.

We recognize a denial of Cuozzo's motion would immediately unseal the material Cuozzo desires to be placed under seal and the effect would be irreversible. Therefore, rather than denying the motion at this time, we will provide Cuozzo one week to (1) supplement the Motion to Seal, (2) revise the Motion to Seal to limit it to fewer items, (3) withdraw the Motion to Seal and request to expunge Exhibits 3000 and 4000, or (4) withdraw the Motion to Seal, and request to expunge Exhibits 3000 and 4000 and replace them with redacted versions that leave out the confidential information.

It is

ORDERED that Exhibit 3000 and Exhibit 4000 will be made available to the public after 5 PM Eastern on Thursday, March 21, 2013, unless on or prior to that time, Cuozzo (1) files a Supplemental Motion to Seal, (2) files a Revised Motion to Seal which seeks to place fewer items under seal, (3) withdraws the Motion to Seal and requests to expunge Exhibits 3000 and 4000, indicating that Cuozzo will no longer rely on those exhibits, or (4) withdraws the Motion to Seal and requests to expunge Exhibits 3000 and 4000 and to replace them with redacted versions that leave out the confidential information;

FURTHER ORDERED that any supplement or revision that Cuozzo chooses to file should include a detailed discussion that:

Specifies precisely, for each of Exhibits A through P, which portions of the information in that exhibit constitute confidential information under the Office Trial Practice Guide quoted above, **and** why; and

Explains why good cause exists to place such confidential information under seal;

FURTHER ORDERED that the explanation of good cause shall:

Include a certification that none of the alleged confidential information in Exhibits A through P has been made publically available.

FURTHER ORDERED that Cuozzo include, in any supplemental or revised Motion to Seal, a certification that it has in good faith conferred or attempted to confer with the opposing party in an effort to come to agreement as to the scope of the proposed protective order for this *inter partes* review to comply with 37 C.F.R. § 42.54;

FURTHER ORDERED that Cuozzo submit a proposed protective order (*e.g.*, a copy of the default protective order set forth in the Office Patent Trial Practice Guide) with any supplemental or revised motion to seal in compliance with 37 C.F.R. § 42.54; and

FURTHER ORDERED that Garmin has until March 28, 2013, to file an opposition to Cuozzo's Motion to Seal and any supplemental or revised Motion to Seal.

Case IPR 2012-00001
Patent 6,778,074

For PETITIONER

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