

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CRS ADVANCED TECHNOLOGIES, INC.
Petitioner

v.

FRONTLINE TECHNOLOGIES, INC.
Patent Owner

CBM2012-00005 (SCM)
Patent 6,675,151

Before SALLY C. MEDLEY, THOMAS L. GIANNETTI, and JENNIFER
S. BISK, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION
CRS Motion to Seal
37 C.F.R. § 42.14

On May 20, 2013, the Board received from CRS a motion to file documents under seal. Paper 39; “Motion.” The motion is *dismissed* without prejudice to refile a motion to seal in accordance with this order.

Background

Along with its motion, CRS filed a publically available redacted reply to Frontline's response (Paper 41); a non-publically available reply to Frontline's response (Paper 40); two non-publically available exhibits (Exs. 1015 and 1016); and a publically available proposed protective order (Ex. 1018). CRS represents that the proposed protective order is a copy of a protective order entered by the District Court in the related litigation styled *Frontline Techs., Inc., v. CRS, Inc.*, No. 2:07-cv-2457 (E.D. Pa. filed June 18, 2007). In its motion, CRS submits that the parties have agreed that the proposed protective order, previously entered by the District Court, governs the treatment of confidential materials before the Board. Motion 2.

Analysis

The record files for a covered business method patent 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. § 326(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).

A protective order governs the treatment of confidential portions of documents, testimony and other information designated as confidential, as well as the filing of confidential documents or discussion of such information in papers filed with the Board. The Board has the authority to enforce the terms of a protective order entered in a proceeding. *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48770 (Aug. 14, 2012).

Because of the above, it is important that the Board understand and agree to the terms of any proposed protective order filed with the Board. As such, the Board has a default protective order that the parties may follow. When a party deviates from the default protective order, the party should explain the differences between the proposed protective order and the default protective order. A protective order that deviates from the Board's default protective order must nonetheless include certain terms as outlined in the Office Patent Trial Practice Guide. *Id.* (“The Protective Order shall include the following terms:”).

CRS and Frontline are involved in a related litigation; *Frontline Techs., Inc., v. CRS, Inc.*, No. 2:07-cv-2457 (E.D. Pa. filed June 18, 2007). A protective order was entered in that case (Ex. 1018). In the motion, CRS avers that the parties have agreed that the related litigation protective order (“proposed protective order”) governs the treatment of confidential materials before the Board. Motion 2. CRS provides no explanation of the contents of the proposed protective order, how it differs from the Board's default protective order, or how the proposed protective order complies with the Office Patent Trial Practice Guide, such as by providing the terms that the Board requires for its proceedings.

For instance, the Office Patent Trial Practice Guide states that a protective order shall include terms setting forth that certain U.S. Patent and Trademark Office (USPTO) employees have access to the confidential information. A cursory review of the proposed protective order reveals that USPTO employees are not covered by the proposed protective order. Moreover, CRS has not shown that the proposed protective order includes provisions for maintaining certain documents *in this proceeding*

confidential. Thus, the proposed protective order does not appear to provide for certain required terms.

The proposed protective order also appears to be over-inclusive in that it contains terms and conditions that would not apply to the proceeding before the Board. To the extent that CRS believes that it and Frontline are bound by the proposed protective order for this proceeding, CRS has not explained why the Board would be obliged to enforce the order having terms and conditions seemingly not applicable to the proceeding before the Board. As the moving party, CRS bears the burden to show why the Board should take on the role of enforcing the proposed protective order. Without such an explanation, we would not do so.

Lastly, the Board appreciates CRS' efforts to follow the Office Patent Trial Practice Guide insofar as it submitted a confidential and non-confidential version of its reply. However, the motion to seal must explain why the information redacted from the non-confidential version of the reply is confidential and should not be made publicly available. *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48770 (Aug. 14, 2012). We have reviewed the redacted and non-redacted versions of the reply and can only surmise why the redacted portion has been omitted. However, the burden is on CRS to show good cause why the confidential (redacted) portion should not be made publicly available. That CRS has not done. Accordingly, the motion is dismissed for this additional reason.

Conclusion

The motion is dismissed without prejudice for CRS to file a substitute motion to seal in compliance with this order. The Board will maintain CRS'

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non-redacted reply and Exhibits 1015 and 1016 under seal. If CRS does not renew its motion to seal by the due date set forth below, the Board shall make such documents publicly available.

Order

It is

ORDERED that CRS motion to seal is *dismissed* without prejudice for CRS to file a substitute motion to seal in accordance with this order no later than June 5, 2013.

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