

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CRS ADVANCED TECHNOLOGIES, INC.
Petitioner

v.

FRONTLINE TECHNOLOGIES, INC.
Patent Owner

Case CBM2012-00005
Patent 6,675,151C1

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

MEDLEY, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On June 13, 2013, the following individuals participated in a
conference call:

- (1) Mr. Aaron Capron, and Mr. Darrel Karl, counsel for CRS;
- (2) Mr. John Donohue, and Mr. John McGlynn, counsel for Frontline;

and

(3) Sally Medley, Thomas Giannetti, and Jennifer Bisk,
Administrative Patent Judges.

The purpose of the conference call was to discuss CRS' substitute motion to file certain documents under seal (Paper 45;¹ "substitute motion to seal") and the accompanying proposed protective order (Ex. 1019). In the substitute motion to seal, CRS moves for the Board to maintain Exhibits 1015 and 1016, along with CRS' Reply, confidential and unavailable to the public.

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).

As explained during the call, the substitute motion to seal does not provide an explanation, to the Board's satisfaction, of the differences between the parties' proposed protective order and the Board default protective order. The Board does not know why the parties would include certain terms in the proposed protective order such as the provision styled "Prosecution Bar." The terms of at least that paragraph seem to conflict directly with the Board's guidelines. *See, e.g., Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48771, para. (h) (Aug. 14, 2012). Yet, in the substitute motion to seal there is no explanation why such terms need be

¹ Paper number assigned by the PRPS electronic system.

included in the parties' proposed protective order.

As also explained during the call, the Board was not persuaded by the arguments made in the substitute motion to seal that CRS' Reply need be sealed. There was some discussion about whether the parties could possibly submit a redacted version of Exhibits 1015 and 1016, and modify CRS' Reply so that it would not be necessary to maintain any documents under seal. However, the parties could not agree during the call.

The Board suggested that since the sole fact articulated on page 15 of CRS' Reply is not in dispute, then the parties may stipulate to that fact whereby CRS need not rely on Exhibits 1015 and 1016 in support of such fact. The parties were concerned that if they agreed upon such a stipulation, then the record would not be complete for purposes of appeal. However, counsel for the respective parties did not articulate a basis for the concern, nor does the Board see one. If the parties can agree that the fact is admitted, then there would be no occasion to burden this proceeding with documents that must be maintained sealed in the first instance. Counsel for the respective parties indicated that they needed some time to consider this option. The parties are strongly encouraged to reach agreement as to this option.

Lastly, the schedule was discussed. Backup counsel for CRS indicated that lead counsel for CRS has a trial date the day prior to the default scheduled oral argument date for this proceeding. Counsel for the parties indicated that they may request jointly that the August 13, 2013 default oral argument date be moved to either an earlier or later date. As explained, such a request may be denied, since there are many factors that the Board must consider in scheduling AIA oral arguments. Moreover, CRS

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has two backup counsel such that either one may present oral argument for the scheduled date. Counsel for CRS made no indication that either backup counsel would be unavailable to do so. For this additional reason, the Board may not grant a request to alter the oral argument date.

For the reasons provided above, it is

ORDERED that the parties confer and attempt to agree to stipulate to the fact found on page 15 of CRS' Reply. If the parties come to such agreement, CRS shall file, by June 20, 2013, a publically available substitute CRS Reply, with reference to Exhibits 1015 and 1016 removed and indicating per a footnote on page 15 that the stated fact is admitted by Frontline; and

FURTHER ORDERED that if the parties cannot agree with the above, the parties must, by June 20, 2013, arrange a conference call with the Board.

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