

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

GILBERT P. HYATT,  
Plaintiff,

v.

JOSEPH MATAL,  
Defendant.

Civil Action No. 1:09-cv-1864 (RCL)  
Civil Action No. 1:09-cv-1869 (RCL)  
Civil Action No. 1:09-cv-1872 (RCL)  
Civil Action No. 1:05-cv-2310 (RCL)

**DEFENDANT’S EMERGENCY MOTION TO SEAL  
PROTECTED MATERIAL FILED BY PLAINTIFF**

Defendant (“the USPTO”) respectfully moves the Court on an emergency basis to protect the confidentiality of information contained within Exhibit 4 to Plaintiff’s Motion to De-Designate PTO Documents as Protected (*e.g.*, Case No. 05-2310, ECF No. 207), filed on November 7, 2017. This Exhibit (filed as ECF No. 207-5 in Case No. 05-2310; ECF No. 200-5 in Case No. 09-1864; ECF No. 196-5 in Case No. 09-1869; and ECF No. 203-5 in Case No. 09-1872) includes reproductions of some of the very documents Plaintiff seeks to de-designate under the Protective Orders governing these cases.<sup>1</sup> For example, Exhibit 4 – the slide deck used during Mr. Hyatt’s counsel’s opening statement – includes several internal USPTO emails expressly excluded from evidence pursuant to the Court’s granting of the USPTO’s motion *in limine* as to evidence of unclean hands. *See, e.g.*, Case No. 05-2310, ECF No. 189 (Proposed Order), at 3 (referencing documents in Plaintiff’s Opening Statement); Minute Order (Oct. 11,

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<sup>1</sup> *Compare, e.g.*, Case No. 05-2310, ECF No. 207-5 (Exhibit 4), at 13 (including a reproduction of PTX-133, PTO16-0001325), *with* ECF No. 207 (Motion), at 1 (moving the Court “to de-designate as ‘Protected’ documents under the parties’ Stipulated Protective Order” marked with various bates ranges including PTO16-0001325).

2017) (granting the USPTO's motion *in limine*). The Court also rejected Mr. Hyatt's request to rely on these documents in his proposed findings of fact and conclusions of law.

Mr. Hyatt has provided the Court with arguments as to why he believes these documents "are no longer entitled to protection" (*e.g.*, Case No. 05-2310, ECF No. 207-1, at 8), but that does not entitle him to file such documents publicly in advance of full briefing and a determination by the Court. The USPTO simply seeks to have Exhibit 4 sealed to preserve the status quo until the Court has an opportunity to decide Mr. Hyatt's motion. Counsel for the USPTO conferred with Mr. Hyatt's counsel. Mr. Hyatt opposes this motion.

For the foregoing reasons, the USPTO respectfully requests that the Court direct the Clerk to seal this Exhibit in each of the four cases. A proposed order is attached.

Dated: November 9, 2017

Respectfully submitted,

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**(PROPOSED) ORDER**

Upon consideration of Defendant's Emergency Motion to Seal Protected Material Filed by Plaintiff, it is hereby

ORDERED that the motion is granted, and it is further

ORDERED that the Clerk is directed to seal Docket Entry 207-5 in Civil Action No. 1:05-cv-2310 (RCL); Docket Entry 200-5 in Civil Action No. 1:09-cv-1864 (RCL); Docket Entry 196-5 in Civil Action No. 1:09-cv-1869 (RCL); and Docket Entry 203-5 in Civil Action No. 1:09-cv-1872 (RCL).

SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
ROYCE C. LAMBERTH  
United States District Judge