

ESTTA Tracking number: **ESTTA662915**

Filing date: **03/24/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219051
Party	Defendant Asante Solutions, Inc.
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Submission	Other Motions/Papers
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Date	03/24/2015
Attachments	Asante Solutions Inc Motion for Entry of Stipulated Protective Order.pdf(2099940 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SPIRACUR INC.,	)	Opposition No. 91219051
)	
Opposer/Respondent,)	
	)	Serial No. 85/921,995
v.)	
)	
ASANTE SOLUTIONS, INC.,	)	ASANTE SOLUTIONS, INC.'S
	)	MOTION FOR ENTRY OF
Applicant/Petitioner.	)	STIPULATED PROTECTIVE
	)	ORDER
)	

Pursuant to Fed. R. Civ. P. 26(c), 37 C.F.R. § 2.120(f), and Trademark Trial and Appeal Board Manual of Procedure § 412, Applicant/Petitioner Asante Solutions, Inc. requests approval and entry of the Stipulated Protective Order attached hereto as Exhibit A.

Dated: March 24, 2015

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 

Aaron D. Hendelman
Stephanie S. Brannen

Attorneys for Applicant/Petitioner
ASANTE SOLUTIONS, INC.

EXHIBIT A

information disclosed by the parties during this proceeding, including but not limited to information disclosed prior to execution or imposition of this order.

TERMS OF ORDER

1. Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations:

- **CONFIDENTIAL**—Material to be shielded by the Board and the parties from public or non-party access.
- **HIGHLY CONFIDENTIAL**—Material to be shielded by the Board and the parties from public or non-party access and subject to agreed restrictions on access even as to the parties and/or their in-house attorneys.
- **TRADE SECRET/COMMERCIALY SENSITIVE**—Material to be shielded by the Board and the parties from public or non-party access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of paragraph 4, by independent experts or consultants for the parties.

2. Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was

lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

3. Access to Protected Information.

Judges, attorneys, and other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment.

Parties are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.

Attorneys for parties are defined as including **in-house counsel** and **outside counsel of record in this action**, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.

Independent experts or consultants include individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.

Non-party witnesses include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

A receiving party may use information disclosed by another party or non-party in connection with this action only for prosecuting, defending, or attempting to settle this action. Only parties and

their attorneys shall have access to information designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL, subject to any agreed exceptions. Only a receiving party's outside counsel of record in this action, but not in-house counsel, shall have access to information designated as TRADE SECRET/COMMERCIALY SENSITIVE. For the avoidance of doubt, disclosure of information designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL, or TRADE SECRET/COMMERCIALY SENSITIVE to any non-parties or the public is prohibited, unless otherwise provided in this order.

4. Disclosure to Independent Experts or Consultants.

Any receiving party or attorney proposing to share disclosed information with an independent expert or consultant must notify the party which designated the information as protected. Notification must be made at least ten (10) business days prior to disclosure, and personally served or forwarded by certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the expert or independent consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the expert or independent consultant. If objection is made, then the parties must negotiate the issue before raising the issue before the Board. If the parties are unable to settle their dispute, then it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle their dispute. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

In addition to the foregoing, prior to disclosure of protected information by any party or its attorney to an expert or independent consultant, the expert or independent consultant shall be informed of the existence of this order and provided with a copy to read. The expert or independent consultant

will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the expert or independent consultant. No expert or independent consultant shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the expert or independent consultant. The party or attorney receiving the executed certification shall retain the original.

5. Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 11.

6. Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing

all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 11.

7. Depositions.

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document or otherwise on the record during the deposition. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information.

Deposition testimony may be designated on the record during the deposition as containing protected information of the categories specified in paragraph 1. If no such designation is made on the record, the transcript of any deposition and all exhibits or attachments shall be considered protected for 30 days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made either on the record or during that 30-day period following the deposition, then the entire transcript and exhibits will be considered unprotected.

8. Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

9. Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 11 of this order.

10. Handling of Protected Information.

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case. The recipient of any protected information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

11. Redaction; Filing Material With the Board.

When a party or attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some

confidential material, it may be more reasonable to simply submit the entire document under seal.

Occasions when a whole document or brief must be submitted under seal should be very rare.

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

12. Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error. The inadvertent production of any privileged material shall not be deemed a waiver or impairment of any claim of privilege with respect to that material, including, but not limited to, the attorney-client privilege and/or work-product doctrine. Any party or its counsel recognizing that he/she/it has obtained material containing in whole or in part information protected by the attorney-client privilege and/or work-product doctrine that appears to have been inadvertently disclosed shall not read or review the privileged material but shall immediately return the material to the producing party. Within ten (10) business days of receiving written notice from a person or party who represents that he/she/it has inadvertently produced any privileged material, the recipient(s) of such request shall return the original and all copies of such inadvertently produced privileged material within his/her/its possession, custody, or control.

13. Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

14. Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

The parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned.

15. Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order.

By Agreement of the Following, effective

March 24, 2015

Date

Name: Steve VanOril
Title: CFO
Opposer/Respondent: Spiracur Inc.

Name: Ken E. Stein
Title: VP of Commercialization
Applicant/Petitioner: Asante Solutions, Inc.

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Asante Solutions, Inc.

By Order of the Board, effective _____, 2015.

Jennifer Krisp

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SPIRACUR INC.,	)	Opposition No. 91219051
)	
Opposer/Respondent,)	
	)	Serial No. 85/921,995
v.)	
)	
ASANTE SOLUTIONS, INC.,	)	[PROPOSED]
	)	PROTECTIVE ORDER
Applicant/Petitioner.)	

**ACKNOWLEDGMENT OF ORDER PROTECTING CONFIDENTIALITY OF
INFORMATION REVEALED DURING BOARD PROCEEDING**

I, _____ [print name], declare that I have been provided with a copy of the Order regarding the disclosure of, and protection of, certain types of information and documents during and after the above-captioned opposition proceeding before the Trademark Trial and Appeal Board.

I have read the Order and understand its terms and provisions, by which I agree to be bound. Specifically, I agree to hold in confidence any information or documents disclosed to me in conjunction with any part I take in this proceeding.

I declare under the penalty of perjury that these statements are true and correct.

[signature]

[print title, if applicable]

[date]

CERTIFICATE OF SERVICE BY EMAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

On this date, I served **ASANTE SOLUTIONS, INC.'S MOTION FOR ENTRY OF STIPULATED PROTECTIVE ORDER** on each person listed below, by forwarding the document(s) by electronic transmission to the Internet email address listed below:

Charlene M. Krogh (krogh.charlene@dorsey.com)
Lee F. Johnston (johnston.lee@dorsey.com)
Andrea Ahn (ahn.andrea@dorsey.com)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Palo Alto, California on March 24, 2015.



Elvira Minjarez