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Paper 27 (CBM2014-00190)
Paper 25 (CBM2014-00192)
Paper 25 (CBM2014-00193)
Paper 28 (CBM2014-00194)
Paper 25 (CBM2014-00199)
Entered: June 24, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS AMERICA, INC. and SAMSUNG
ELECTRONICS CO., LTD.,
Petitioner,

v.

SMARTFLASH LLC,
Patent Owner.

Cases¹

CBM2014-00190 (Patent 7,334,720 B2)
CBM2014-00192 (Patent 8,033,458 B2)
CBM2014-00193 (Patent 8,061,598 B2)
CBM2014-00194 (Patent 8,118,221 B2)
CBM2014-00199 (Patent 8,118,221 B2)

Before JENNIFER S. BISK, RAMA G. ELLURU, GREGG I. ANDERSON,
MATTHEW R. CLEMENTS, and PETER P. CHEN,
Administrative Patent Judges.

¹ This order addresses issues that are the same in all identified cases. We exercise our discretion to issue one order to be filed in each case. The parties, however, are not authorized to use this style heading in subsequent papers.

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ELLURU, *Administrative Patent Judge*.

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

Patent Owner Smartflash LLC (“Patent Owner”) filed a motion to seal (Paper 24²; “Mot.”), requesting that Exhibit 2057 in its entirety and Patent Owner’s unredacted “Patent Owner’s Response” (Paper 22), which refers to Exhibit 2057, be sealed. Patent Owner also filed a redacted version of its Patent Owner Response. Paper 23.³ Patent Owner’s motion was filed on June 1, 2015. Pursuant to an email from the Board⁴, Samsung Electronics America, Inc., and Samsung Electronics Co., Ltd. (“Petitioner”) filed an Opposition to Patent Owner’s motion. Paper 26. For the reasons stated below, Patent Owner’s motion to seal is granted in part.

² Paper numbers refer to papers in CBM2015-00190, unless otherwise specified.

³ We note that Patent Owner’s motion states “Petitioner is concurrently filing a non-confidential version of the Petition with the confidential material redacted” (Mot. at 1), which we interpret as an error, and instead interpret the statement as a reference to Patent Owner’s Response.

⁴ We note that our email, dated June 16, 2015, requested Petitioner to indicate whether it opposes Patent Owner’s motion to seal. Patent Owner’s motion to seal requested sealing Exhibit 2057 *and* the unredacted version of Patent Owner’s Response. Paper 24. Petitioner’s opposition, however, addresses only Patent Owner’s request to seal Exhibit 2057. Paper 26. Thus, Petitioner has through June 29, 2015, to indicate whether it opposes Patent Owner’s request to seal Patent Owner’s unredacted Response.

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Patent Owner must show good cause for the relief requested, including why the information is appropriate to be filed under seal. 37 C.F.R. § 42.54. The Office Patent Trial Practice Guide notes that 37 C.F.R. § 42.54 identifies 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. 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012).

Exhibit 2057 is a portion of a transcript beginning on a page marked “189” and ending on a page marked “287.” Patent Owner asserts that Exhibit 2057 is the unredacted transcript of the confidential portion of the deposition of Jeffrey Adam Bloom, Ph.D. (Petitioner’s declarant), taken on May 20, 2015. Mot. at 1. Patent Owner asserts that at the time of filing its Patent Owner Response, it was unclear whether Dr. Bloom’s employer, SiriusXM, desired to maintain the confidentiality designation of the transcript, and counsel for Petitioner could not give counsel for Patent Owner a definitive answer before the deadline for filing. *Id.* Thus, contends Patent Owner, “Good cause therefore exists for sealing this exhibit, redacting reference to it in the publicly filed Patent Owner’s Response and treating it as [sealed] until such time as counsel for Petitioner can give a definitive answer.” *Id.*

Petitioner asserts that “the pages of Exhibit 2057 containing arguably confidential material are those marked: 193–95, 219–239, and 243–46,” and Petitioner does not oppose Patent Owner’s request to seal these pages. Paper 26, 2. Petitioner, however, does oppose sealing the remaining pages of the transcript, which are 189–192, 196–218, 240–42, and 247–287, contending

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that these pages “do not appear to contain testimony touching on
confidential topics.” *Id.* at 2–3.

Upon considering the content of Exhibit 2057, along with Petitioner’s
and Patent Owner’s representations as to the confidentiality of the
information provided by Dr. Bloom, we determine that Patent Owner has
shown good cause for sealing pages 193–95, 219–239, and 243–46 of
Exhibit 2057, but not the remaining pages.

It is

ORDERED that Patent Owner’s motion to seal pages 193–95, 219–
239, and 243–46 of Exhibit 2057 is granted;

FURTHER ORDERED that Patent Owner’s motion to seal pages
189–192, 196–218, 240–42, and 247–287 is denied;

FURTHER ORDERED that Patent Owner shall file a redacted version
of Exhibit 2057 redacting only those pages that are sealed by June 29, 2015;
and

FURTHER ORDERED that Petitioner shall indicate whether it
opposes Patent Owner’s request to seal Patent Owner’s Response by June
29, 2015.

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