

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JDS UNIPHASE CORPORATION
Petitioner

v.

CAPELLA PHOTONICS, INC.
Patent Owner

Case No. IPR2015-00731
Patent No. RE 42,368

PETITIONER'S MOTION TO SEAL DOCUMENTS

I. Relief Requested

Pursuant to 37 C.F.R. §§ 42.14 and 42.54 and the Proposed Stipulated Protective Order (“Protective Order”) agreed to by the parties and submitted in this proceeding (*see* Paper No. 18, Ex. A), and for the reasons set forth below, Petitioner hereby moves to seal its Motion to Re-Caption the Proceeding (Paper 21) (hereinafter the “Proposed Sealed Document”)¹, which has been filed contemporaneously with this Motion. Additionally, Petitioner has filed a redacted, public version of the Proposed Sealed Document as “confidentiality is alleged as to some but not all of the information” therein. *See* Protective Order, ¶ 4(A)(ii).

Because the Proposed Sealed Document contains Petitioner's confidential business information that is not publicly available, Petitioner moves to seal it for good cause explained in more detail below.

II. Good Cause Exists for Sealing Confidential Information

The *Office Patent Trial Practice Guide* provides that “[t]he rules aim to strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive

¹ Petitioner understands that Paragraph 4(A) of the Default Protective Order and the Proposed Stipulated Protective Order authorizes and requires the present Motion.

information.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, those “rules identify 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.” *Id.* (citing 37 C.F.R. § 42.54); *see also Illumina, Inc. v. Columbia Univ.*, IPR2013-00011, Paper 66 (P.T.A.B. Aug. 12, 2013) (granting a motion to seal “technical and business information” and “product development information”). The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. In determining good cause, the board must balance the public’s interest in a complete and understandable file history with a party’s interest in protecting sensitive information. *See Garmin Int’l v. Cuozzo Speed Tech., LLC*, IPR2012-00001, Paper 36 at 3-4 (P.T.A.B. April 5, 2013). The public’s interest in viewing Petitioner’s confidential business information that is only indirectly related to patent invalidity is minimal (*Id.* at 8-9), and is outweighed by Petitioner’s interest in protecting its confidential business information.

Petitioner seeks to seal its Motion to Re-Caption the Proceeding because a portion of that document summarizes and/or otherwise reveals Petitioner’s confidential business information derived from documents that are not publicly available, the disclosure of which could have a serious negative impact on Petitioner and its business. In particular, the confidential portion of the Motion

consists of one footnote that describes a portion of a non-public schedule attached to a public agreement that is described in the Motion. The footnote with the confidential information has been redacted from the publicly-filed version of Petitioner's Motion to Re-Caption the Proceeding (Paper 22).

Undersigned counsel for Petitioner has conferred with counsel for the Patent Owner regarding the relief requested in this Motion, and counsel for Patent Owner has agreed not to object to this Motion.

III. Certification of Non-Publication

On behalf of Petitioner, the undersigned counsel certifies that the information sought to be sealed by this Motion has not been published or otherwise made public.

IV. Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Board grant the present Motion and seal its Motion to Re-Caption the Proceedings (Paper 21).

Dated: January 22, 2016

Respectfully submitted,

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Case No. IPR2015-00731
Petitioner's Motion to Seal Documents

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing
Petitioner's Motion to Seal Documents to be served by email on the following:

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