

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JDS UNIPHASE CORPORATION
Petitioner

v.

CAPELLA PHOTONICS, INC.
Patent Owner

Case IPR2015-00739
Patent RE42,678

**JOINT MOTION TO SEAL AND FOR
ENTRY OF PROTECTIVE ORDER**

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P.O. Box 1450
Alexandria, VA 22313-1450

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, and for the reasons set forth below, Petitioner JDS Uniphase Corporation (“Petitioner”)¹ and Patent Owner Capella Photonics, Inc. (“Patent Owner”) (collectively, “Parties”) respectfully and jointly request that the Board seal the unredacted version of Patent Owner’s Exhibit 2032, the Deposition Transcript of Sheldon McLaughlin. Petitioner and Patent Owner further jointly request entry of the Proposed Stipulated Protective Order (Ex. A).²

The Parties submit concurrently herewith: (i) Confidential Unredacted Exhibit 2032; (ii) Redacted Exhibit 2032; (iii) Proposed Protective Order (Ex. A); and (iv) Redline reflecting changes from the Default Protective Order (Ex. B.)

¹ As a result of a reorganization involving original Petitioner JDS Uniphase Corporation, the real parties-in-interest in this proceeding are now Lumentum Holdings Inc., Lumentum Inc., and Lumentum Operations LLC. *See* IPR2015-00731, Updated Mandatory Notice, Paper 11 (Sept. 15, 2015); IPR2015-00739, Updated Mandatory Notice, Paper 10 (Sept. 15, 2015).

² Pursuant to 37 C.F.R. § 42.54, the parties have conferred in good faith and jointly request the relief identified herein.

II. MOTION TO SEAL

Documents filed in an IPR are generally available to the public. 37 C.F.R. § 42.14. However, the Board may, for good cause, protect confidential information from public disclosure. 37 C.F.R. § 42.54; *see also Garmin Int’l v. Cuozzo Speed Tech., LLC*, IPR2012-00001, Paper 36 (Apr. 5, 2013) (“*Garmin*”), at 3-4.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. When determining good cause, the Board balances the public’s interest in a complete and understandable file history with the parties’ interest in protecting sensitive information. *See Garmin* at 3-4 (*citing* Office Trial Practice Guide, 77 Fed. Reg. at 48760). However, the public’s interest in having access to a party’s confidential business information that is only indirectly related to patent validity is low. *Id.* at 8-9. Here, the Petitioner’s interests in protecting confidential business information outweighs the public’s interest in viewing that information.

The Parties seek to seal portions of Exhibit 2032, the Deposition Transcript of Sheldon McLaughlin, a Senior Principal Optical Development Engineer employed by Petitioner. Petitioner has represented to Patent Owner that the information requested to be sealed contains confidential business information of Petitioner, including technical designs and specifications of Petitioner’s products, activities relating to the development of Petitioner’s products and employment-related matters. Petitioner represents that this information goes to the heart of

Petitioner's business activities and its product lines. Petitioner further represents that disclosure of this sensitive information to persons not directly involved with this IPR proceeding could have a serious negative impact on Petitioner and its business. For the purposes of this motion and proceeding, Patent Owner accepts Petitioner's representations.

To address the balance between Petitioner's interest in protecting sensitive information with the public's interest in a complete and understandable file history, the Parties are submitting with this motion a redacted version of Exhibit 2032, rather than seeking to seal the entire document. *See Office Trial Practice Guide*, 77 Fed. Reg. 48756, 48761 (2012). Petitioner further certifies that the information sought to be sealed by this motion has not been published or otherwise made public.

In sum, the public's interest in having access to the limited redacted portions of Exhibit 2032, reflecting Petitioner's confidential business information, is relatively low, and is outweighed by Petitioner's interest in maintaining the confidentiality of this information. For these reasons, the Parties respectfully request that this joint motion to seal be granted.

III. MOTION FOR ENTRY OF PROTECTIVE ORDER

Pursuant to 37 C.F.R. § 42.54, the Parties move for entry of the proposed protective order submitted as Exhibit A with this motion. A red-line of the

Joint Motion to Seal and for Entry of Protective Order

differences between the proposed order and the Default Protective Order is submitted as Exhibit B with this motion.

Good cause exists for entering the proposed Protective Order with the proposed changes, as described more fully below:

| No. | Proposed Change from Default Protective Order | Reason for Proposed Change |
|-----|--|--|
| 1. | Addition of caption and deletion of first sentence | This change identifies that the Protective Order applies to this proceeding, and that it is different from the Standing Protective Order. |
| 2. | Addition of Section 1.1. (“Party” definition) | Because there have been requests for joinder filed, there may be some ambiguity as to whether “party” would include joined parties. This definition clarifies that it does not. Thus, for example, information designated as confidential by the Petitioner/RPI or Patent Owner could not be shared with outside counsel or experts of a joined party. This is important for the reasons discussed in points 4 and 5, below. |
| 3. | Footnote 1 | This identifies the Petitioner’s real parties in interest to the proceeding, as a result of a |

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