

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC., SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

SUMMIT 6 LLC,
Patent Owner

CASE: IPR2015-00806¹
Patent No. 7,765,482

Title: Web-Based Media Submission Tool

PATENT OWNER'S MOTION TO EXPUNGE

¹ Samsung Electronics Co., Ltd., who filed a Petition in IPR2016-00029, has been joined as a petitioner in the instant proceeding.

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.56, Patent Owner Summit 6 respectfully moves the Board to expunge from the record exhibits not relied upon by the Board in its Final Written Decision, un-redacted exhibits and papers that have been previously-filed as redacted versions, and confidential exhibits relied upon by the Board for which redacted versions are submitted herewith. Exhibits 1019, 2001, 2002, 2020, 2021, 2033, 2047, 2075, and Paper 42 are collectively referred to herein as the “Confidential Documents.”

More specifically, Patent Owner moves to expunge from the record in their entirety Exhibits 2001, 2002, and 2047, which the Board did not rely upon in its Final Written Decision, Paper 63. Patent Owner also moves to expunge Paper 42 and Exhibits 1019 and 2075 because redacted versions of those materials have been filed. Finally, Patent Owner moves to expunge Exhibits 2020, 2021, and 2033, which the Board did rely upon, and replace them with redacted versions.

Ordinarily, the deadline for filing a motion to expunge is 45 days from the Board's final written decision, which was entered in IPR2015-00806 on September 6, 2016 (Paper 63) (the “Final Written Decision”). *See* Office Patent Trial Practice Guide (“Trial Practice Guide”), 77 Fed. Reg. 48756, 48760-61 (Aug. 14, 2012).

Unless the Board decides a motion before that 45-day deadline, the confidential exhibits will become publicly available. *Id.*

In this case, the Order on Public Availability of Proceeding Documents, entered on September 6, 2016, Paper 64, explained that any sealed documents relied upon in the Final Written Decision, Paper 63, would be unsealed. However, the Board instructed that documents may be expunged if the parties filed a motion to expunge to replace the exhibits with public versions that only redact confidential information not identified in the Final Written Decisions. Paper 64 at 3–4. Notwithstanding, the Board also recognized that Patent Owner could not move to expunge at that time because the Court of Appeals for the Federal Circuit needed the entire record of this proceeding to evaluate Patent Owner's appeal. Paper 65 at 2–3.

Because the appeal is now complete, Patent Owner moves to expunge the Confidential Documents. Additionally, because the Confidential Documents contain confidential information, Patent Owner respectfully requests that the Board rule on this motion prior to the Confidential Documents becoming a part of the public record in this case. Alternatively, Patent Owner requests that the Board issue an interim order delaying the public release of the Confidential Documents until such a time that the Board can rule on Patent Owner's Motion to Expunge.

Prior to filing the instant motion, Patent Owner submitted the same to counsel for Petitioner for comment. Petitioner's counsel advised that Petitioner has no comment to Patent Owner's motion.

II. BACKGROUND

A. Procedural Background

Throughout this proceeding, the parties have filed various motions to seal certain papers and exhibits. *See, e.g.*, Papers 13, 29, 30, 37, 40, 47, 54. One motion to seal certain papers and exhibits was granted. *See* Paper 18 (sealing Exhibits 2001, 2002, 2020, 2021, and 2033). Multiple motions to seal have been conditionally granted as to certain papers and exhibits. *See* Papers 44 (conditionally sealing Exhibit 2047) and 59 (conditionally sealing Exhibit 1019 and Paper 42). On September 6, 2016, the Board entered its Final Written Decision in which it relied on certain sealed papers and exhibits. *See* Paper 63. On October 7, 2016, the parties filed a Joint Stipulation of Papers and Exhibits, agreeing to the identification of the exact portions of all sealed papers and exhibits cited in the Final Written Decision, Paper No. 63. *See* Paper 67.

Exhibit 1019: p. 73, line 1–p. 77, line 9; *see* Paper 63 at 34;

Exhibit 2020: p. 12 and pp. 24–26; *see* Paper 63 at 36-37;

Exhibit 2021: p. 7, ¶ 5.9; *see* Paper 63 at 37;

Exhibit 2033: *see* Paper 63 at 38; and

Exhibit 2075; *see* Paper 63 at 70.

The parties stipulated that the Board did not cite the remaining sealed exhibits or papers. *See id.* at 1.

B. Applicable Legal Standards

Pursuant to 35 U.S.C. § 316(a)(7), “confidential information” is protected from disclosure. 35 U.S.C. § 316(a)(7) (“The Director shall prescribe regulations . . . providing for protective orders governing the exchange and submission of confidential information.”) Confidential information should be defined in a manner consistent with Fed. R. Civ. P. 26(c)(1)(G). Trial Practice Guide, 77 Fed. Reg. 48756 at 48760. Granting a motion to seal confidential information requires a showing of “good cause.” 37 C.F.R. § 42.54. The same standard applies to a motion to expunge “confidential information” under 37 C.F.R. § 42.56 after final judgment in a trial. *RPX Corp. v. Virnetx Inc.*, IPR 2014-00171, Paper 62 at 3 (PTAB Sept. 9, 2014). The movant generally has the burden of showing entitlement to the requested relief. 37 C.F.R. § 42.20(c); *RPX Corp.* at 3.

C. Good Cause Exists to Expunge the Confidential Documents From the Record

Pursuant to 37 C.F.R. § 42.56, Patent Owner respectfully moves the Board to expunge in their entirety Exhibits 2001, 2002, and 2047, and Exhibits 2020, 2021,

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