

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

SUMMIT 6 LLC,
Patent Owner.

Case IPR2015-00806¹
Patent 7,765,482 B2

Before HOWARD B. BLANKENSHIP, GEORGIANNA W. BRADEN, and
KERRY BEGLEY, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

DECISION
Patent Owner's Motion to Seal
37 C.F.R §§ 42.14 and 42.54

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

INTRODUCTION

Patent Owner filed a Supplement to its Motion to Seal (Paper 29). Paper 47. In its Supplement, Patent Owner requests that the Board seal the deposition transcript of Sarah Pate (Exhibit 1019) and portions of Petitioner's Corrected Reply (Paper 42).² Patent Owner further seeks to unseal Exhibits 1016, 1018, and 2050, which had been the subject of its Motion to Seal (Paper 29). Petitioner did not file an Opposition to Patent Owner's Supplement to its Motion to Seal. For reasons discussed below, Patent Owner's Supplement to its Motion to Seal is *conditionally granted* as to Exhibit 1019 and Paper 42 and is *granted* as to Exhibits 1016, 1018, and 2050.

Patent Owner also filed a Motion to Seal Exhibit 2075. Paper 54. Petitioner did not file an Opposition to Patent Owner's Motion to Seal Exhibit 2075. For reasons discussed below, Patent Owner's Motion to Seal Exhibit 2075 is *conditionally granted*.

DISCUSSION

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are

² An initial version of the publicly available, redacted Corrected Petitioner's Reply to Patent Owner's Response is found at Paper 41. Petitioner later filed another publicly available, redacted Corrected Petitioner's Reply to Patent Owner's Response as Paper 46. This Order is directed to the non-public, unredacted version Petitioner's Reply to Patent Owner's Response found at Paper 42.

open and available for access by the public; a party, however, may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7). In that regard, the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012) provides:

The 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 information.

...

Confidential Information: The 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. § 42.54.

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a). In Patent Owner’s Supplement to its Motion to Seal and its Motion to Seal Exhibit 2075, Patent Owner bears the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c). The Board needs to know why the information sought to be sealed constitutes confidential information.

In Patent Owner’s Supplement to its Motion to Seal, Patent Owner moves to seal Exhibit 1019 because the exhibit “contains specific confidential testimony” that “is not publicly known or available and should remain confidential.” Paper 47, 1. Patent Owner explains that portions of Exhibit 1019 relate to confidential provisions of Exhibits 2020, 2021, and 2033, all of which have been sealed in this proceeding. *Id.* at 2–3; *see also* Paper 18 (order sealing certain exhibits). Patent Owner has filed a public,

redacted version of Exhibit 1019, and states that the redactions “include only the portions of confidential Exhibit 1019 that constitute[] confidential information under the Office Patent Trial Practice Guide and such confidential information has not been made available publically.”

Paper 47, 3.

Patent Owner also moves to seal portions of Paper 42, which is Petitioner’s Corrected Reply. *Id.* According to Patent Owner, page 19, lines 14–17, 20 and page 20, lines 1–3 contain confidential information related to the confidential provisions of sealed Exhibit 2021. *Id.* A publicly available, redacted version of Petitioner’s Corrected Reply has been filed as Paper 46.

In Patent Owner’s Motion to Seal Exhibit 2075, Patent Owner moves to seal portions of the deposition transcript of Gary Frazier. Paper 54. According to Patent Owner, there is good cause to seal Exhibit 2075 because the exhibit “contains specific confidential testimony” that “is not publicly known or available and should remain confidential.” *Id.* at 1. Patent Owner explains that portions of Exhibit 2075 relate to confidential provisions of Exhibits 2001, 2002, and 2033, all of which have been sealed in this proceeding. *Id.* at 1–2; *see also* Paper 18 (order sealing certain exhibits). Patent Owner has filed a public, redacted version of Exhibit 2075.

Paper 54, 1.

As discussed previously, there is a strong public policy for making all information filed in an *inter partes* review open to the public. Upon review of Exhibit 1019, Exhibit 2075, and Paper 42, and the stated confidentiality of the redacted portions of the documents by Patent Owner, the Board *conditionally* grants both Patent Owner’s Supplement to its Motion to Seal (Paper 47) and Patent Owner’s Motion to Seal Exhibit 2075 (Paper 54) for

the duration of this proceeding. If the Board's final written decision substantively relies on the redacted information in the sealed exhibits or paper, that redacted information will be unsealed by an Order of the Board; and if the redacted portion of the exhibits or paper contains no information substantively relied on by the Board in the final written decision, then the unredacted sealed versions of the exhibits or paper may be expunged from the record by an Order of the Board.

CONCLUSION

For the foregoing reasons, Patent Owner's Supplement to its Motion to Seal (Paper 47) and Patent Owner's Motion to Seal Exhibit 2075 (Paper 54) are *conditionally* granted. It is

ORDERED that with respect to Exhibit 1019 and Paper 42, Patent Owner's Supplement to its Motion to Seal (Paper 47) is *conditionally* granted and the unredacted exhibit and unredacted paper will be kept under seal unless and until the Board refers to redacted material in the exhibit or paper in a final written decision;

FURTHER ORDERED that with respect to Exhibit 2075, Patent Owner's Motion to Seal (Paper 54) is *conditionally* granted and the unredacted exhibit and unredacted paper will be kept under seal unless and until the Board refers to redacted material in the exhibit in a final written decision; and

FURTHER ORDERED that Exhibits 1016, 1018, and 2050 will be unsealed and made available to the public

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