

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC.,
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*.

ORDER

Public Availability of Proceeding Documents
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

The Parties have filed several Motions to Seal certain papers and exhibits during the course of this proceeding. *See* Papers 13, 29, 30, 37, 40, 47. One Motion to Seal certain papers and exhibits was granted. *See* Paper 18. Multiple Motions to Seal have been *conditionally granted* as to certain papers and exhibits. *See* Papers 44, 59. Thereafter, on September 6, 2016, the Board entered a Final Written Decision in which we refer to and rely on material in certain conditionally sealed papers and exhibits. Paper 63, 33-34.

Given the number of papers and exhibits that have been conditionally sealed, Patent Owner and Petitioner shall file a Joint Stipulation that identifies with particularity the exact portions (by page or paragraph number) of all sealed papers and exhibits that are cited in the Final Written Decision by October 7, 2016. The Joint Stipulation shall include a Counsel Certification attesting to the accuracy and completeness of the Joint Stipulation, including a statement verifying that the exact portion of each paper and exhibit cited in the Final Written Decision is identified (by page or paragraph number) in the Joint Stipulation.

In the Orders conditionally granting the Motions to Seal, we specifically provided the parties advance notice that the unredacted “exhibit . . . w[ould] be kept under seal unless and until the Board refers to material in the exhibit in a final written decision.” *See* Paper 44, 4; Paper 59, 5. Furthermore, the Rules of Practice for Trial Before the Patent Trial and Appeal Board (“Rules of Practice”) provide that:

Confidential information that is subject to a protective order ordinarily will become public 45 days after denial of a petition

to institute a trial or 45 days after final judgment in a trial. *There is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial.* A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.

77 Fed. Reg. No. 157, Part V at Section I.E.6. (Aug. 14, 2012) (emphasis added). There is a presumption, therefore, that any confidential information cited in the Final Written Decision, entered September 6, 2016, shall become public on October 24, 2016.

A strong public interest favors maintaining a complete and understandable record of the patent history, including the factual basis for the Board's findings and the intelligibility of the Final Written Decision. By placing confidential information before the Board, either through its Papers or through one of its Declarants, the parties accepted the risk that the information would become public if relied upon in the Final Written Decision. *See* Rules of Practice, 77 Fed. Reg. No. 157, Part V at Section I.E.6. (Aug. 14, 2012) (“There is an expectation that information will be made public where the existence of the information . . . is identified in a final written decision following a trial.”).

Accordingly, all papers and exhibits identified in the Joint Stipulation shall be unsealed and made publicly available on October 24, 2016, unless a revised public version of the paper or exhibit, conforming to the following requirements, is filed by October 14, 2016 (that is, ten days prior to the date set for unsealing). Specifically, a party may prevent the unsealing of a paper or exhibit, by filing, no later than October 14, 2016, a revised public version

of the paper or exhibit, in which each line, page, and/or paragraph cited in the Final Written Decision is left unredacted. Material not cited in the Final Written Decision may be redacted in the revised public version.

Any request for reconsideration of this Order shall be filed no later than September 30, 2016.

No other briefing is authorized at this time.

Should the parties require assistance in complying with this Order, the Board is available for a teleconference during the week of September 26, 2016. Counsel may initiate a request for a teleconference by sending an email to Trials@USPTO.gov.

For the foregoing reasons, it is

ORDERED that by October 7, 2016, Patent Owner and Petitioner shall file a Joint Stipulation of Papers and Exhibits as described in this Order, which identifies with particularity the exact portions (by line, page, and/or paragraph number) of all sealed papers and exhibits that are cited in the Final Written Decision;

FURTHER ORDERED that the Joint Stipulation shall include a Counsel Certification attesting to the accuracy and completeness of the Joint Stipulation, including a statement verifying that the exact portion of each paper and exhibit cited in the Final Written Decision is identified (by line, page, and/or paragraph number) in the Joint Stipulation;

FURTHER ORDERED that all papers and exhibits identified in the Joint Stipulation shall be unsealed and made publicly available on October 24, 2016, unless a revised public version of the paper or exhibit, conforming to the requirements of this Order, is filed by October 14, 2016;

FURTHER ORDERED that a party may prevent the unsealing of any paper or exhibit identified in the Joint Stipulation by filing, no later than October 14, 2016, a revised public version of the paper or exhibit in which each line, page, and/or paragraph cited in the Final Written Decision is left unredacted; and

FURTHER ORDERED that any request for reconsideration of this Order shall be filed no later than September 30, 2016.

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