

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASML NETHERLANDS B.V., EXCELITAS TECHNOLOGIES CORP., AND
QIOPTIQ PHOTONICS GMBH & CO. KG,
Petitioners

v.

ENERGETIQ TECHNOLOGY, INC.,
Patent Owner

Case IPR2015-01362
U.S. Patent No. 8,969,841

**MOTION FOR ENTRY OF DEFAULT PROTECTIVE ORDER AND
MOTION TO FILE CONFIDENTIAL DOCUMENTS UNDER SEAL
PURUSANT TO 37 C.F.R. §§ 42.14 & 42.54**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Energetiq Technology, Inc. (“Energetiq”) respectfully submits this Motion to Seal portions of Energetiq’s Patent Owner Response and certain exhibits thereto.

I. Background

Energetiq is submitting materials in this proceeding that contain highly sensitive technical and business information belonging to Energetiq as well as a third party, a competitor of Petitioner ASML. On February 16, 2016, a conference call was held among respective counsel for Petitioner and Patent Owner, and Judges Medley, Chang, and Parvis, to discuss submission of these materials under a revised Protective Order.

The same day, the Board issued paper 18, which, among other things, urged Patent Owner to contact the third party regarding de-designating or redacting to eliminate third party confidential information that Patent Owner seeks to submit. Paper 18 at 3, 5. The Board additionally required that the Patent Owner remind the third party that information submitted in these IPR proceedings may be made public, as set forth in the Office Patent Trial Practice Guide, so as to ensure that the third party’s agreement to the use of its information in these IPR proceedings is with the knowledge of the risks associated with the submission of the information to the Board.

Patent Owner has complied with the Board’s requests. In response to Patent

Owner's relaying the above information to the third party, the third party has agreed to Patent Owner's submitting redacted copies of its materials under seal, with certain material withheld due to the competitive situation that exists between it and ASML Netherlands B.V. Patent Owner now moves to the Board to enter the default Protective Order, attached as Appendix A, and moves to file these redacted third party papers—in addition to certain other materials discussed below—under seal.

II. Good Cause Exists for Sealing Certain Confidential Information

Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, papers filed in an *inter partes* review are open and available to the public by default; however, a party may file a motion to seal, in which case the information at issue remains sealed pending the outcome of the motion. *Id.* Generally, only “confidential information” is protected from disclosure. 35 U.S.C. § 316(a)(7). The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a).

Patent Owner submits that portions of its Response and each of the Proposed Exhibits summarized in the table below contains confidential trade secret, business, and/or commercial information of either Energetiq or a third party. In the table below, Patent Owner provides detailed reasons demonstrating good cause to seal each of the Proposed Exhibits.

Exhibit	Good Cause for Filing Under Seal
2008	<p data-bbox="378 321 1432 401">“<i>A Novel Electrodeless Light Source for Wafer Inspection Applications</i>,” (January 4, 2006)</p> <p data-bbox="378 447 1432 569">This document contains confidential information in the form of Energetiq proprietary design information and third party business strategy information.</p>
2010	<p data-bbox="378 579 1432 615">Bucksbaum Declaration</p> <p data-bbox="378 661 1432 831">This document contains confidential information in the form of multiple references to documents having proprietary design information and business strategy information of Energetiq and third parties.</p> <p data-bbox="378 877 1432 957">Patent Owner is also submitting a redacted (public) version of this Exhibit.</p>
2016	<p data-bbox="378 968 1432 1003">Smith Declaration</p> <p data-bbox="378 1050 1432 1220">This document contains confidential information in the form of multiple references to documents having proprietary design information and business strategy information of Energetiq and third parties.</p> <p data-bbox="378 1266 1432 1346">Patent Owner is also submitting a redacted (public) version of this Exhibit.</p>
2027	<p data-bbox="378 1356 1432 1392">“Light Source Proposal...” (12/15/2005)</p> <p data-bbox="378 1438 1432 1562">This document contains confidential information in the form of Energetiq proprietary design information and third party business strategy information.</p>
2028	<p data-bbox="378 1572 1432 1608">2007 ASML/Energetiq Email</p> <p data-bbox="378 1654 1432 1778">This document contains confidential information in the form of Energetiq proprietary technical and business strategy information and confidential ASML information.</p>
2030	<p data-bbox="378 1789 1432 1824">Project Agreement for Feasibility Study (May 3, 2006)</p>

	<p>This document contains Energetiq and third-party proprietary business strategy and technical information.</p>
2036	<p>Presentation to ASML, “LDLS Laser Driven Light Sources for i-Line” (10/25/2007)</p> <p>This document contains confidential information in the form of Energetiq proprietary design information.</p>
2037	<p>Presentation to ASML, “Next Generation LDLS UV Lamp for ASML” (2/12/2008)</p> <p>This document contains confidential information in the form of Energetiq proprietary design information and confidential ASML information.</p>
2040	<p>2007 Energetiq License Agreement</p> <p>This document contains Energetiq and third party confidential licensing and financial information.</p>
2041	<p>2010 Energetiq License Agreement</p> <p>This document contains Energetiq and third party confidential licensing and financial information.</p>
2042	<p>Email from Energetiq to ASML</p> <p>This document contains confidential information in the form of Energetiq business strategy information and confidential ASML information.</p>
2043	<p>Email from Qioptiq to Energetiq dated September 29, 2014</p> <p>This document contains confidential information in the form of Energetiq business strategy information.</p>
2065	<p>ASML BV LDLS Roadmap (6/11/2013)</p> <p>This document contains confidential information in the form of Energetiq business strategy and technical information and confidential ASML information.</p>

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