UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

CALIFORNIA INSTITUTE OF TECHNOLOGY,
Patent Owner.

Case IPR2017-00210
U.S. Patent No. 7,116,710

PETITIONER'S MOTION TO SEAL

STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner Apple Inc. respectfully requests that the Board seal Petitioner's Reply, Exhibits 1050 (IRA.cpp with metadata), 1051 (IRA.h with metadata), 1052 (IRAsimu.cpp with metadata), 1053 (IRAsimu.cpp with metadata), 1054 (GetInter.cpp with metadata), 1055 (excerpts from the deposition of Dr. Hui Jin (Case No. 16-cv-3714)), and 1063 (Transcript of the Deposition of Dr. Hui Jin).

REASONS FOR RELIEF REQUESTED

Although "the default rule is that all papers filed in an *inter partes* review are open and available for access by the public," a party may file a motion with the Board to seal confidential information that is protected from disclosure. *Garmin v. Cuozzo*, IPR2012-00001, Paper No. 36. "The standard for granting a motion to seal is 'for good cause.'" *Id.* (quoting 37 C.F.R § 42.54). The Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012), states that the "rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure ('FRCP') 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information."

The parties have conferred and agreed to the provisions of the Protective Order set forth in Exhibit 1069, and have stipulated to be bound to the terms set forth

therein. Exhibit 1070 shows the proposed modifications from the Board's Default Protective Order, to which the parties have stipulated, in redline. The Protective Order provides:

> Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. The nonconfidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that some or all of the redacted information does not qualify for confidential treatment.

Ex. 1069 at 4.

Petitioner has filed its Petitioner's Reply under seal, as well a publicly-available redacted version of its Reply. The redacted portions of

Petitioner's Reply contain information designated as "CONFIDENTIAL – ATTORNEYS EYES ONLY" by Patent Owner, which Patent Owner claims are "confidential research, development, or commercial information" pursuant to FRCP 26(c)(1)(G).

Exhibits 1050-1054 are source code files with associated metadata designated as "CONFIDENTIAL – ATTORNEYS EYES ONLY" by Patent Owner, which Patent Owner claims are "confidential research, development, or commercial information" pursuant to FRCP 26(c)(1)(G). Furthermore, Exhibits 1050-1054 were designated "CONFIDENTIAL – ATTORNEYS EYES ONLY" by Patent Owner in the district court litigation *California Inst. of Tech. v. Broadcom Ltd.*, No. 2:16-cv-03714-GW-AGR (C.D. Cal. May 26, 2016).

Exhibit 1055 is an excerpt from the deposition transcript of Dr. Hui Jin in the district court litigation *California Inst. of Tech. v. Broadcom Ltd.*, No. 2:16-cv-03714-GW-AGR (C.D. Cal. May 26, 2016), designated as "CONFIDENTIAL – ATTORNEYS EYES ONLY" by Patent Owner, which Patent Owner claims is "confidential research, development, or commercial information" pursuant to FRCP 26(c)(1)(G). Furthermore, Exhibit 1055 was designated "CONFIDENTIAL" by Patent Owner in the district court litigation *California Inst. of Tech. v. Broadcom Ltd.*, No. 2:16-cv-03714-GW-AGR (C.D. Cal. May 26, 2016).

Petitioner has filed its Exhibit 1063 under seal, as well a publicly-available redacted version of Exhibit 1063. The redacted portions of Exhibit 1063 contain information designated as "CONFIDENTIAL – ATTORNEYS EYES ONLY" by Patent Owner, which Patent Owner claims are "confidential research, development, or commercial information" pursuant to FRCP 26(c)(1)(G).

Petitioner therefore respectfully requests that the aforementioned materials remain under seal pursuant to the Protective Order.

Dated: February 7, 2018

Respectfully Submitted,

/Michael Smith/

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