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Paper 64
Date: September 13, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

CALIFORNIA INSTITUTE OF TECHNOLOGY,
Patent Owner.

Cases IPR2017-00210 and IPR2017-00219 (Patent 7,116,710 B1);
Cases IPR2017-00700, IPR2017-00701,
and IPR2017-00728 (Patent 7,421,032 B2)[1]

Before KEN B. BARRETT, TREVOR M. JEFFERSON, and
JOHN A. HUDALLA, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

ORDER
Granting-in-Part Petitioner's Motion to Seal and
Entry of Protective Order
37 C.F.R. § 42.54

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[1] This order addresses issues that are the same in the identified cases. We exercise our discretion to issue one order to be filed in each case. The parties are not authorized to use this style of heading.

Petitioner filed, in each of the above-captioned cases, a motion to seal Petitioner's Reply, a deposition transcript, and certain other exhibits. IPR2017-00210, Paper 47; IPR2017-00219, Paper 46; IPR2017-00700, Paper 44; IPR2017-00701, Paper 44; and IPR2017-00728, Paper 44. Petitioner also filed in each case a proposed Protective Order along with an exhibit showing the proposed modifications from the Board's Default Protective Order. *E.g.*, IPR2017-00210, Exhibits 1069, 1070.[2] Petitioner represents that the parties have conferred and agree to the provisions of the modified version of the Default Protective Order. IPR2017-00210, Paper 47, 1.

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. *See Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, Case IPR2012-00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). 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 open and available for access by the public; however, a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. It is only "confidential information" that is protected from disclosure. 35 U.S.C. § 316(a)(7); *see* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). The standard for granting a motion to seal is "good cause." 37 C.F.R. § 42.54(a). The party moving to

[2] Unless otherwise indicated, we refer to the papers and exhibits filed in IPR2017-00210. Petitioner filed substantively the same or similar papers and exhibits in the other cases listed in the caption.

seal bears the burden of proof in showing entitlement to the requested relief and must explain why the information sought to be sealed constitutes confidential information. *See* 37 C.F.R. § 42.20(c). As set forth in the Trial Practice Guide (77 Fed. Reg. at 48,761), there is an expectation that information will be made public if identified in the Final Written Decision.

Petitioner explains that it seeks to seal in each case Petitioner's Reply because it contains information designated as confidential by Patent Owner and claimed by Patent Owner to be confidential research, development, or commercial information pursuant to Federal Rule of Civil Procedure 26(c)(1)(G). Paper 47, 2–3. Petitioner further explains that Exhibits 1050–1054 are source code files with associated metadata, Exhibit 1055 is an excerpt from the deposition transcript of Dr. Hui Jin in a district court litigation, and Exhibit 1063 is a transcript of the deposition of Dr. Jin taken in these cases. *Id.* at 1, 3–4. Petitioner states that these exhibits contain what Patent Owner claims to be confidential research, development, or commercial information. *Id.* at 3–4. Petitioner has provided redacted versions of the Reply (Paper 45) and of the deposition transcript of Dr. Jin taken in these cases (Ex. 1063).

We determine that Petitioner has demonstrated good cause for sealing portions of Petitioner's Reply in IPR2017-00210 and IPR2017-00219 and portions of the deposition transcript and the other identified exhibits filed in all the captioned cases.

However, Petitioner has not demonstrated good cause for sealing portions of Petitioner's Reply in IPR2017-00700, IPR2017-00701, and IPR2017-00728. From our review of the public version of the Reply filed in each of those cases, the only information that appears to have been redacted

is a group of exhibit numbers in a citation. *See* IPR2017-00700, Paper 46, 18 n.5; IPR2017-00701, Paper 46, 21 n.5; IPR2017-00728, Paper 46, 17 n.4. We do not find the exhibit numbers to constitute, on the facts of these cases, confidential information.

Additionally, we have reviewed the modified version of the Default Protective Order and find it acceptable.

We remind the parties that confidential information that is subject to a protective order ordinarily would become public after final judgment in a trial. *See* 37 C.F.R. § 42.14; Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,761. The parties may move to expunge confidential information from the record after final judgment (and appeals, if any). 37 C.F.R. § 42.56.

Accordingly, it is

ORDERED that Petitioner's Motions to Seal in IPR2017-00210 (Paper 47) and IPR2017-00219 (Paper 46) are *granted*;

FURTHER ORDERED that Petitioner's Motions to Seal in IPR2017-00700 (Paper 44), IPR2017-00701 (Paper 44), and IPR2017-00728 (Paper 44) are *denied* as to the request to seal the Reply brief filed in each of those cases and *granted* as to the request to seal the exhibits identified in each respective motion (1000-series exhibits with exhibit numbers ending in 50, 51, 52, 53, 54, 55 and 63);

FURTHER ORDERED that the Protective Orders submitted by Petitioner (IPR2017-00210, Ex. 1069; IPR2017-00219, Exhibit 1269; IPR2017-00700, Exhibit 1069; IPR2017-00701, Exhibit 1169; and IPR2017-00728, Exhibit 1269) are hereby *entered*.

IPR2017-00210, IPR2017-00219 (Patent 7,116,710 B1)
IPR2017-00700, IPR2017-00701, IPR2017-00728 (Patent 7,421,032 B2)

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