

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

SAMSUNG ELECTRONICS CO., LTD.,

and

SAMSUNG ELECTRONICS AMERICA, INC.

Petitioners,

v.

FIRSTFACE CO., LTD,

Patent Owner.

Case IPR2019-00611

U.S. Patent No. 8,831,557

**PETITIONER APPLE'S UNOPPOSED MOTION TO EXPUNGE
CONFIDENTIAL INFORMATION UNDER SEAL**

Pursuant to 37 C.F.R. § 42.56, and authorization received via email from the Patent Trial and Appeal Board (the “Board”) on September 11, 2020, Petitioner Apple Inc. (“Apple”) hereby moves for an order expunging protected documents filed under seal in IPR2019-00611, namely any under seal “Board Only” versions of the Declaration of Michael Hulse (Ex. 1004) and the Declaration of Yosh Moriarty (Ex. 1031). These documents include confidential and commercially sensitive business information of Apple. The Board’s decision denying institution in this proceeding does not cite or discuss Exhibits 1004 or 1031, and the record already contains publicly-available versions of Exhibits 1004 and 1031 that have not been excessively redacted. Accordingly, Apple hereby moves to expunge the confidential information currently under seal.

If the Board is not inclined to grant this Motion, Apple respectfully requests a conference call with the Board to discuss the issues raised in this Motion before any information becomes irreversibly public.

I. BACKGROUND

Exhibits 1004 and 1031 were filed January 23, 2019 in publicly-available versions (redacted) and versions under seal (not-redacted; for “Board Only” viewing). Apple filed a motion to seal (Paper 7) the confidential “Board Only” versions of Exhibits 1004 and 1031 because these exhibits contain confidential and commercially sensitive business information of Apple. The Board granted Apple’s

motion to seal (Paper 10), finding good cause exists for sealing the confidential information. In addition, the Board expunged duplicate copies of Exhibits 1004 and 1031 filed as “Board Only.” Paper 10 at 6. The Board issued a decision denying institution of *inter partes* review in this proceeding (Paper 11), which does not cite or discuss Exhibits 1004 or 1031.

II. CONFIDENTIAL DOCUMENTS SHOULD BE EXPUNGED

Apple requests that any under seal “Board Only” versions of Exhibits 1004 and 1031 in IPR2019-00611 be expunged from the record.

“A party seeking to maintain the confidentiality of information ... may file a motion to expunge the information from the record prior to the information becoming public.” PTAB Consolidated Trial Practice Guide, November 2019 (“Practice Guide”) at 22; 37 CFR § 42.56. “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.” *Id.* Conversely, where a decision does not rely (or only minimally relies) on the confidential information, the Board has granted motions to expunge, finding that there is limited public interest in the confidential information and the record is minimally affected. *See, e.g., Unverferth Mfg. Co. v. J&M Mfg. Co.*, IPR2015-00758, Paper 29 at 2 (P.T.A.B. Sept. 30, 2015) (granting motion to expunge because the decision did not rely upon the exhibit at issue and “the file and

decision remain understandable in the absence of” the exhibit). “The rule encourages parties to redact sensitive information, where possible, rather than seeking to seal entire documents.” Practice Guide at 22.

In this proceeding, the Board previously found that good cause exists to seal the versions of Exhibits 1004 and 1031 filed as “Board Only” in view of the confidential nature of the information contained in the exhibits. Paper 10 at 5. The Board’s subsequent decision denying institution does not refer to Apple’s confidential information, and indeed does not refer to *any* version of Exhibits 1004 and 1031 (including the publicly-available redacted versions). In addition, the record contains publicly-available versions of Exhibits 1004 and 1031 that have not been excessively redacted. Paper 10 at 5 (“We also note that the redacted portions of the materials appear to be tailored narrowly to only confidential information.”). Accordingly, the public’s interest in having access to Apple’s confidential information is very minimal, and such information should be expunged for good cause.

Apple respectfully submits that good cause exists here and thus requests that the Board expunge any under seal “Board Only” versions of Exhibits 1004 and 1031 due to the confidential and commercially sensitive nature of the information in those documents. Apple has conferred with Petitioners Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc. and Patent Owner Firstface Co., Ltd., who

have indicated that they do not oppose this Motion.

III. CONCLUSION

For the reasons set forth above, Petitioner Apple respectfully requests that its Unopposed Motion to Expunge Confidential Information Under Seal be granted.

Dated: September 15, 2020

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