

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., SAMSUNG ELECTRONICS CO., LTD., and
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

FIRSTFACE CO., LTD.,
Patent Owner.

IPR2019-00611
Patent 8,831,557 B2

Before JUSTIN T. ARBES, MELISSA A. HAAPALA, and
RUSSELL E. CASS, *Administrative Patent Judges*.

ARBES, *Administrative Patent Judge*.

ORDER

Granting Petitioner's Unopposed Motion to Expunge
37 C.F.R. § 42.56

Apple Inc. ("Apple"), Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc. (collectively, "Petitioner") filed a Petition (Paper 3) requesting *inter partes* review of claims 1, 8, 9, and 15 of U.S. Patent No. 8,831,557 B2 (Ex. 1001). Petitioner also filed both public (redacted) and sealed (unredacted) versions of Exhibits 1004 and 1031 along

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with a Motion to Seal as to the redacted portions, which we granted. *See* Papers 7, 10. We subsequently denied institution of *inter partes* review, and did not refer to any of the sealed material in the Decision. *See* Paper 11, 2 n.1. Petitioner later filed a Motion to Expunge (Paper 14, “Mot.”) the unredacted versions of Exhibits 1004 and 1031 from the record. Petitioner argues that “[t]hese documents include confidential and commercially sensitive business information of Apple,” “[t]he 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.” Mot. 1. Petitioner states that Patent Owner does not oppose the Motion. *Id.* at 3–4.

“After denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.” 37 C.F.R. § 42.56. “The moving party has the burden of proof to establish that it is entitled to the requested relief.” 37 C.F.R. § 42.20.

The Patent Trial and Appeal Board Consolidated Trial Practice Guide

(Nov. 2019), 21–22, *available at* <https://www.uspto.gov/>

TrialPracticeGuideConsolidated, provides:

Confidential information that is subject to a protective order ordinarily would 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. 37 C.F.R. § 42.56. The rule balances the needs of the parties to submit confidential information with the public interest in maintaining a complete and understandable file history for public notice purposes. The rule encourages parties

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to redact sensitive information, where possible, rather than seeking to seal entire documents.

We are persuaded that expunging the unredacted versions of Exhibits 1004 and 1031 is appropriate under the circumstances. We previously found that the redacted portions constituted confidential information of Apple and were narrowly tailored to only confidential information. *See* Paper 10, 5. Further, we did not cite or rely on anything in the documents in rendering our Decision denying institution of *inter partes* review. Accordingly, the record of the proceeding and Decision remain understandable in the absence of the redacted materials.

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Motion to Expunge (Paper 14) is *granted*; and

FURTHER ORDERED that the unredacted versions of Exhibits 1004 and 1031 filed under seal are expunged from the record of this proceeding.

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