

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

v.

FIRSTFACE CO., LTD,

Patent Owner.

Case IPR2019-00613¹

U.S. Patent No. 9,633,373

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

¹ Case IPR2019-01011 has been consolidated with this proceeding. Unless otherwise indicated, all citations to a "Paper" are to IPR2019-00613.

Pursuant to 37 C.F.R. § 42.56 and authorization received from the Board in its September 15, 2020 Order (Paper 28; IPR2019-01011, Paper 11), Petitioner Apple Inc. (“Apple”) hereby moves for an order expunging protected documents filed under seal in IPR2019-00613 and IPR2019-01011, namely the 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 Final Written Decision in these consolidated proceedings 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. In addition, Exhibits 1004 and 1031 were not cited by the parties or the Federal Circuit on appeal, and the appeal has now concluded. Accordingly, Apple hereby moves to expunge the confidential information currently under seal.²

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.

² The Board previously granted Apple’s motion to expunge the same exhibits in a related IPR proceeding. *Apple Inc. v. FirstFace Co., Ltd.*, IPR2019-00611, Paper 15 (Sept. 24, 2020).

I. BACKGROUND

Exhibits 1004 and 1031 were filed January 23, 2019 in IPR2019-00613 and April 24, 2019 in IPR2019-01011 in publicly-available versions (redacted) and versions under seal (not-redacted; for “Board Only” viewing). Apple filed motions to seal (Paper 6; IPR2019-01011, Paper 6) 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 motions to seal (Paper 9; IPR2019-01011, Paper 8), finding good cause exists for sealing the confidential information. On October 28, 2019, the Board ordered that IPR2019-00613 and IPR2019-01011 are consolidated, and that all further filings shall be made in IPR2019-00613. Paper 14 at 23; IPR2019-01011, Paper 9 at 23. On July 31, 2020, the Board issued a Final Written Decision (Paper 27; IPR2019-01011, Paper 10), which does not cite or discuss Exhibits 1004 or 1031.

On September 15, 2020, the Board ordered that the record of IPR2019-00613 and IPR2019-01011 will be maintained undisturbed until 14 days after the conclusion of any appeal taken from the Final Written Decision. Paper 28; IPR2019-01011, Paper 11. The Board further ordered that, at the conclusion of any appeal proceeding, Petitioner may file a motion to expunge the sealed materials from the record pursuant to 37 C.F.R. § 42.56. *Id.*

Apple filed a notice of appeal (Paper 29) on September 29, 2020. The Federal

Circuit heard the appeal (Case 21-1001) and issued an opinion and judgment on September 13, 2021 affirming the Board’s decision. The Federal Circuit issued its formal mandate on October 20, 2021.

II. CONFIDENTIAL DOCUMENTS SHOULD BE EXPUNGED

Apple requests that the under seal “Board Only” versions of Exhibits 1004 and 1031 in IPR2019-00613 and IPR2019-01011 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., Apple*, IPR2019-00611, Paper 15 (granting motion to expunge because the Board did not cite or rely on anything in the documents in rendering its decision and “the record of the proceeding and Decision remain understandable in the absence of redacted materials”). “The rule encourages parties to redact sensitive information, where possible, rather than

seeking to seal entire documents.” Practice Guide at 22.

In these proceedings, 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 9 at 5; IPR2019-01011, Paper 8 at 5. The Board’s subsequent Final Written Decision 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). Similarly, Exhibits 1004 and 1031 were not cited by the parties or the Federal Circuit on appeal, and were not included in the Joint Appendix. In addition, the record in these IPR proceedings contains publicly-available versions of Exhibits 1004 and 1031 that have not been excessively redacted. Paper 9 at 5 (“We also note that the redacted portions of the materials appear to be tailored narrowly to only confidential information.”); *see also* IPR2019-01011, Paper 8 at 5. 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*, IPR2019-00611, Paper 15 (granting motion to expunge the same exhibits).

Apple respectfully submits that good cause exists here and thus requests that the Board expunge the under seal “Board Only” versions of Exhibits 1004 and 1031 in IPR2019-00613 and IPR2019-01011 due to the confidential and commercially sensitive nature of the information in those documents. Apple has conferred with

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