

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

v.

FIRSTFACE CO., LTD.,

Patent Owner.

Case IPR2019-00613

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

PETITIONER APPLE INC.'S MOTION TO SEAL

I. STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner Apple Inc. (“Apple”) respectfully submits this Motion to Seal (“Motion”) the Declaration of Michael Hulse (Ex. 1004) and the Declaration of Yosh Moriarty (Ex. 1031) (collectively, “the Declarations”), filed January 23, 2019 in publicly-available versions (redacted) and versions under seal (not-redacted; for Board viewing only). The Parties have agreed to the provisions of the Standing Protective Order, attached as Appendix A, which is a modified version of the Default Protective Order. Good cause exists for sealing the identified documents in accordance with the Standing Protective Order and standards governing sealing.

II. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

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 Declarations include confidential and commercially sensitive business information. In particular, the Declarations include confidential information regarding at least (1) Apple’s internal systems for managing and tracking documents and information, including an identification of those systems and/or their histories of use within Apple, (2) Apple’s internal document naming conventions, (3) Apple’s internal workflow for publishing documents, and (4) internal metadata and/or properties assigned to Apple documents. This information originated from Apple’s internal systems (as shown and described in the Declarations), is not publicly available, and has been and continues to be intended to remain confidential.

Apple faces concrete harm if its confidential information is released to the public. As described above, the confidential information includes details about *how* Apple operates, providing specific insight into Apple’s operations with respect to internal systems, documentation, and information. If this information were subject to public access, Apple’s processes would be subject to copying by competitors. In addition, the public identification of Apple’s internal systems would create security risks. For example, public disclosure of the confidential information would allow would-be attackers to gain insight into the structure of Apple’s internal file systems,

databases, and servers, thereby putting at risk additional confidential information including, *e.g.*, Apple's technical, financial, and customer information.

There exists a genuine need to rely on the Declarations in this proceeding. The Petition cites to the Declarations to support the date of public availability of *iPhone User Guide For iPhone OS 3.1 Software* (Ex. 1007) and *iPhone 3G Finger Tips* (Ex. 1032), which are used in grounds of unpatentability.

On balance, the harm faced by Apple in making the redacted information available outweighs any interest in releasing it to the public. The Declarations have not been excessively redacted, and the non-redacted (*i.e.*, public) portions of the Declarations include detailed information about the identity and employment of the declarant, non-confidential details about the contents and history of Exhibits 1007 and 1032, and identification of the dates of public availability of Exhibits 1007 and 1032. Thus, any public interest in having access to the redacted portions is minimal, and does not outweigh the harm faced by Apple.

Accordingly, good cause exists for sealing portions of the Declarations. Apple respectfully moves to file under seal the portions of the Declaration of Michael Hulse (Ex. 1004) and the Declaration of Yosh Moriarty (Ex. 1031) containing Apple's confidential information.

III. PROTECTIVE ORDER

Apple respectfully requests that the Board enter the Standing Protective Order attached as Appendix A to protect the sensitive and confidential information contained in Exhibits 1004 and 1031. The Parties agree to adopt and be bound by a modified version of the Default Protective Order (77 FED. REG. 48756, 48771 (Aug. 14, 2012)). In comparison to the Default Protective Order, the Standing Protective Order in Appendix A contains an additional designation “PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS’ EYES ONLY” for confidential material and restricts the material to Outside Counsel, Experts, Office Staff and Support Personnel. In addition, the Standing Protective Order provides that Support Personnel shall also include support personnel of outside counsel of record for a party in the proceeding. *See* Appendix B (redline version showing changes to the Default Protective Order).

Good cause exists for these restrictions as the Board has recognized a necessity for similar designations on confidential material in other IPR proceedings. *See Xactware v. Sols., Inc. v. Eagle View Techs., Inc.*, Case IPR2016-00589, slip op. at 2-3 (PTAB Nov. 23, 2016) (Paper 33); *VIZIO, Inc. v. Nichia Corp.*, IPR2017-01623, slip op. at 5 (PTAB Jan. 9, 2019) (Paper 73). Here, the more limited access provided by the “PROTECTIVE ORDER MATERIAL – OUTSIDE

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