

Filed: May 12, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE (USA) INC.,

PETITIONER,

V.

BELL NORTHERN RESEARCH, LLC,

PATENT OWNER.

Case No. IPR2019-01365

U.S. Patent No. 7,039,435

**PATENT OWNER'S MOTION TO SEAL
UNDER 37 C.F.R. § 42.54**

I. INTRODUCTION

Pursuant to 37 CFR § 42.14 and 42.54 and the proposed Modified Protective Order filed in this proceeding on April 14, 2020 (Paper 16) (currently pending the Board’s review), Patent Owner Bell Northern Research, LLC respectfully submits this Motion to Seal Exhibits 2024, 2025, and 2027 and a portion of Patent Owner’s Response that refers to the contents of those exhibits. Patent Owner submits that good cause exists for placing these exhibits and the corresponding portion of the Response under seal.

II. APPLICABLE LEGAL PRINCIPLES FOR SEALING CONFIDENTIAL INFORMATION

There is a strong public policy for making all information filed in a quasijudicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in a patent and therefore affects the rights of the public. *See St. Jude Medical, Cardiology Division, Inc. v. Volcano Corp.*, IPR2013-00258, Paper 28 at 2 (PTAB Aug. 12, 2013). Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; and a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. *Id.*

However, the Board permits the protection of certain “confidential information.” *See* 35 U.S.C. § 316(a)(7) (“The Director shall prescribe regulations

-- ... providing for protective orders governing the exchange and submission of confidential information”). *Id.* In that regard, the *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012), provides:

The rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.

* * *

Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. § 42.54.

See also Office Patent Trial Practice Guide, 77 Fed. Reg. 64280 (November, 2019) at 19-20 (“A party may file a motion to seal where the motion contains a proposed protective order, such as the default protective order in Appendix B... , protective orders may be issued for good cause by the Board to protect a party from disclosing confidential information”).

The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54.

III. DOCUMENTS TO BE SEALED

A. Exhibits 2024 and 2027

Exhibit 2024 is a patent license agreement between LSI Logic Corp. and LG Electronics dated 2013. Exhibit 2027 is a patent license agreement between Bell Northern Research, LLC (“BNR”) and Huawei entities from 2019.

These licenses are confidential business information, some of which now belongs to third party Broadcom Inc. and have been protected as such throughout this proceeding and all related proceedings of which BNR is aware. Good cause exists to seal the these exhibits because public disclosure of the information contained in them risks harming each of the licensees/counterparties to the underlying agreement. The confidential portions of the agreements include details about what the companies agreed to license, under which terms, and other confidential business information that could adversely impact the business of these companies; for example, in these companies’ ongoing or future licensing negotiations with other entities.

B. Exhibit 2025

Exhibit 2025 is the Declaration of Chad Hilyard, General Counsel of Bell Northern Research, LLC and former in-house lawyer for Agere Systems, Inc. and LSI Logic Corporation (“LSI”). Mr. Hilyard testifies, based on personal knowledge, regarding the contents of various license agreements between LSI and other parties, as well as agreements between BNR and other parties. The licenses

are confidential business information, some of which now belongs to third party Broadcom Inc. and have been protected as such throughout this proceeding and all related proceedings of which BNR is aware. Good cause exists to seal the declaration because public disclosure of the information contained in Mr. Hilyard's declaration risks harming each of the licensees/counterparties to the underlying agreement. The confidential portions of the agreements include details about what the companies agreed to license, under which terms, and other confidential business information that could adversely impact the business of these companies; for example, in these companies' ongoing or future licensing negotiations with other entities.

C. Patent Owner Response

Portions of the Patent Owner Response specifically reference and quote the contents of Exhibits 2024 and 2027, which are described above. Thus, for the same reasons set forth above with respect to these exhibits, good cause exists to seal the limited portions of the Patent Owner Response in which these references or quotations are made.

IV. CERTIFICATION OF NON-PUBLICATION

On behalf of Patent Owner, the undersigned counsel certifies the information sought to be sealed has not been published or otherwise made public. Further, the confidentiality of this information has been consistently maintained by the Patent

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