

Filed: March 23, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LG ELECTRONICS, INC.,

PETITIONER,

V.

BELL NORTHERN RESEARCH, LLC,

PATENT OWNER.

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Case No. IPR2019-00319

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

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

## I. INTRODUCTION

Pursuant to 37 CFR § 42.54, Patent Owner, Bell Northern Research, LLC, respectfully submits this Motion to Seal Exhibit 2016 and a portion Patent Owner's Preliminary Response that refers to the contents of that exhibit. Patent Owner submits that good cause exists for placing this exhibit 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* Trial Practice Guide (2019 Update) at 6 (“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. GOOD CAUSE EXISTS FOR SEALING EXHIBIT 2016**

Exhibit 2016 is the Declaration of Afzal Dean, President of Patent Owner BNR. Mr. Dean testifies regarding the contents of a license agreement between the Petitioner and LSI Corporation that was learned during in connection with BNR’s acquisition of certain patents. The terms of the license are confidential business information that 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. Dean's declaration risks harming each of the licensees/counterparties to the underlying agreement. The confidential portions of the agreements details about what the companies agreed to license that could adversely impact the business of these companies; for example, in these companies' ongoing or future licensing negotiations with other entities.

#### **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 Owner during this proceeding, and any related proceedings.

#### **V. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37 C.F.R. § 42.54**

Patent Owner has conferred in good faith with Petitioner and the parties have agreed to use the default protective order set forth in the Office Patent Trial Practice Guide to govern the treatment of confidential information in this proceeding at this stage.

#### **VI. PROPOSED PROTECTIVE ORDER**

The Protective Order attached hereto as Appendix A corresponds to the default protective order set forth in the Office Patent Trial Practice Guide. Patent

Owner and Petitioner have agreed to use the attached protective order to govern the handling of confidential information in this proceeding. Per agreement of the parties, confidential information will be designated “IPR Protective Order Material.” Accordingly, Patent Owner respectfully requests entry of the Proposed Protective Order.

## **VII. CONCLUSION**

For the above reasons, Patent Owner, Bell Northern Research, LLC, respectfully requests that Exhibit 2016 and the portion of Patent Owner’s Preliminary Response referencing its contents be treated as confidential information and be placed under seal.

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