

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioner,

v.

COREPHOTONICS LTD.,
Patent Owner.

IPR2020-00905 (Patent 10,255,479 B2)
IPR2020-00906 (Patent 10,255,479 B2)¹

Before BRYAN F. MOORE, JOHN F. HORVATH, and
MONICA S. ULLAGADDI, *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

ORDER
Granting Patent Owner's Motions to Seal
37 C.F.R. §§ 42.14, 42.54

¹ This Order addresses issues that are common to the above proceedings. We exercise our discretion to issue a single Order to be filed in each proceeding. The parties may not use this style caption without previous authorization from the Board.

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I. INTRODUCTION

On February 5, 2021, Patent Owner filed confidential (Paper 15) and public (Paper 16) versions of its Response, confidential and public versions of various Exhibits cited in its Response, and an unopposed motion to seal the confidential versions of these documents. *See* Paper 17, 1–2.² Because Patent Owner failed to show that the information it sought to seal was (1) truly confidential and (2) the minimum amount necessary to protect Patent Owner’s interest in maintaining that confidentiality, we denied the motion without prejudice to file “a Revised Motion to Seal setting forth, with particularity, the reasons why the information sought to be redacted is confidential and why the harm from its disclosure outweighs the strong public interest in having an open record.” Paper 30, 7–8.

On May 7, 2021, Petitioner filed confidential (Paper 24) and public (Paper 23) versions of its Reply, confidential and public versions of various Exhibits cited in its Reply, and an unopposed motion to seal the confidential versions of these documents. *See* Paper 25, 2. Because Petitioner failed to show that the information it sought to seal was its own confidential information, we denied the motion. *See* Paper 31, 3–4. However, because Petitioner alleged the information it sought to seal was Patent Owner’s confidential information, we granted Patent Owner leave to identify and redact Patent Owner’s confidential information and to “file a motion to seal setting forth, with particularity, the reasons why the information sought to be

² Similar papers and exhibits have been filed in IPR2020-00905 and IPR2020-00906, although some of the paper and exhibit numbers differ slightly. For convenience, we refer to the paper numbers and exhibits filed in IPR2020-00905.

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redacted is confidential and why the harm from its disclosure outweighs the strong public interest in having an open record.” *Id.*

On July 13, 2021, Patent Owner filed revised confidential (Paper 37) and public (Paper 39) versions of its Response, confidential (Paper 38) and public (Paper 40) versions of Petitioner’s Reply, confidential and public versions of Exhibits cited in its Response and Petitioner’s Reply, and an unopposed revised Motion to Seal. *See* Paper 36 (“Motion” or Mot.”). In its Motion, Patent Owner requests that we seal certain portions of its Response, Petitioner’s Reply, and Exhibits 1037, 1038, 2001, 2006–2013, 2018–2020, 2022, and 2023. *Id.* at 1–3.³

II. DISCUSSION

The record for an inter partes review shall be made available to the public, except as otherwise ordered, and a document filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. There is a strong public policy that favors making information filed in inter partes review proceedings open to the public. *See Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001, Paper 34 (PTAB March 14, 2013) (discussing the standards of the Board applied to motions to seal). Consequently, any documents filed under seal shall have their redactions “limited to the minimum amount necessary to protect confidential information” yet still allowing “the thrust of the underlying argument or evidence [to] be clearly discernible.” *See* Paper 11, 2–3. The standard for granting a motion to seal is “good cause.”

³ Patent Owner has filed confidential and public versions of Exhibits 1037 and 1038, respectively, as confidential and public versions of Exhibits 2201 and 2202.

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37 C.F.R. § 42.54. The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes a showing that the information sought to be protected is truly confidential, and that preserving that confidentiality outweighs the strong public interest in maintaining an open record. *See Garmin* at 3.

Upon our review of Patent Owner’s revised Motion to Seal and the documents Patent Owner seeks to seal, we find Patent Owner has met the burden set forth in *Garmin* for sealing documents. First, Patent Owner does not seek to seal the entirety of its Response, Petitioner’s Reply, and Exhibits 1037, 1038, 2001, 2006–2013, 2018–2020, 2022, and 2023. *See Mot.* 1–3. Second, Patent Owner explains with particularity why the portions of these documents that it seeks to seal are both confidential and the minimum portions necessary to preserve Patent Owner’s interest in maintaining that confidentiality. *Id.* at 3–17. Accordingly, we *grant* Patent Owner’s revised Motion to Seal its Response (Paper 37), Petitioner’s Reply (Paper 38), and Exhibits 1037, 1038, 2001, 2006–2013, 2018–2020, 2022, and 2023.⁴

Although we grant Patent Owner’s revised Motion to Seal, we remind the parties that any confidential information relied upon in a Board decision may be made public in order to maintain a complete and understandable public record of this proceeding. *See Consolidated Trial Practice Guide*⁵ at 21–22. In addition, any confidential information may be made public 45 days after a final judgment in this proceeding. *Id.* A party seeking to maintain the confidentiality of such information may file a motion to

⁴ *See* n.3, *supra*.

⁵ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>

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expunge the information prior to its becoming public. *Id.* (citing 37 C.F.R. § 42.56).

III. ORDER

Accordingly, it is:

ORDERED that Patent Owner's Motion to Seal Patent Owner's Response, Petitioner's Reply, and Exhibits 1037, 1038, 2001, 2006–2013, 2018–2020, 2022, and 2023 is *granted*.

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