

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION and HP INC.,
Petitioners

v.

SYNKLOUD TECHNOLOGIES, LLC,
Patent Owner

Case IPR2020-01269
U.S. Patent 9,219,780

PATENT OWNER'S MOTION TO SEAL
37 C.F.R. §§42.54, 42.55

Patent Owner Syncloud Technologies, LLC (“PO” herein) moves to submit confidential information as evidence in support of its position in the above-captioned matter, and accordingly moves that Exhibits 2029, 2030, and 2039 submitted contemporaneously herewith, be accepted but not made public and maintained confidential to a Modified Protective Order submitted herewith as Exhibit 2036. In so moving, PO is guided by this Board’s Decision in IPR2017-01053, Paper No. 27, and decisions cited therein, including IPR2012-00001, Paper No. 34.

PO, as an element of its position that the claims challenged in the above-captioned IPR are not obvious over prior art cited, wishes to submit two licenses extended under the patent at issue, U.S. Patent No. 9,219,780 (“the ‘780 patent”) along with an associated claim chart as secondary indicia of non-obviousness pursuant to well-established caselaw. *See, e.g., Rothman v. Target Corp.* 556 F.3d 1310, 1321 (Fed. Cir. 2009). The public is not denied essential information by sealing Exhibits 2029, 2030, and 2039. The Exhibits are two licenses between the owner of the ‘780 Patent and two recognized corporations, in consideration of payment of fees, along with an associated claim chart. No other issues, such as sales, conditions, promotions or other issues are set forth in or raised by the licenses, and thus, questions such as nexus and the like are not raised. PO does not rely on the identity of the Licensees, other than to note they are recognized major corporations in the computer technology field. PO does not

are in consideration of payment of money, and no other consideration flows between the parties.

By its terms, further information with respect to the licenses and associated claim chart is confined to outside counsel only. To that end, PO has fashioned a Protective Order premised on the Board's default protective order in the practice guide, but altered to limit the confidential information submitted to the specific counsel appearing for Petitioners in this matter. Submission of this information, which Court's have often found of value in considering questions of obviousness, without seal or protection, would potentially vitiate the licenses as a possible breach thereof and/or expose PO to liability.

Undersigned counsel has conferred with opposing counsel. Opposing counsel agreed to the Modified Protective Order that is Exhibit 2036 in earlier filed IPRs against patents in the same family as the '780 patent.

Accordingly, PO respectfully requests Exhibits 2029, 2030, and 2039 be held confidential to the Board provisionally, pending grant of this Motion or expungement if this Motion is denied.

Respectfully, PO submits it has met the Board's standard for submission under seal, *Argentum Pharmaceuticals LLC v. Alcon Research*, IPR 2017-01053, Paper 27 (January 19, 2018) at p. 4. 1) The confidential information, two patent licenses, is truly confidential – it is confidential by its terms. 2) Concrete harm would result upon public disclosure of Exhibits 2029 or 2039. it would

genuine need to rely in the trial on the specific information sought to be sealed. It is PO's strong evidence of a judicially recognized indication of non-obviousness – a patent license. 4) On balance, the interest in maintaining confidentiality as to this one exhibit outweighs the strong public interest in having an open record.

On this basis, and in light of the proposed Modified Protective Order that is Exhibit 2036, PO respectfully requests grant of this Motion and acceptance of Exhibits 2029, 2030, and 2039 under seal.

Respectfully submitted,

/Gregory J. Gonsalves/

Dr. Gregory J. Gonsalves

Reg. No. 43,639

Capitol IP Law Group, PLLC

1918 18th St, Unit 4, NW

Washington, DC 20009

Phone: 571-419-7252

Email:

gonsalves@capitoliplaw.com

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e) and by the agreement of counsel for Petitioners, I certify that on July 1, 2021, I served a complete electronic copy of the Motion on the Petitioner's lead and backup counsel at the following email addresses:

Lead Counsel

Joseph A. Micallef
Reg. No. 39,772
iprnotices@sidley.com
jmicallef@sidley.com
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8492

Backup Counsel

Scott M. Border
Reg. No. 77,744
sborder@sidley.com
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8818

/Gregory J. Gonsalves/
Dr. Gregory J. Gonsalves
Reg. No. 43,639
Capitol IP Law Group, PLLC
1918 18th St, Unit 4, NW
Washington, DC 20009
Phone: 571-419-7252
Email: gonsalves@capitoliplaw.com