

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD.,
SAMSUNG ELECTRONICS AMERICA, INC. and APPLE INC.,
Petitioner,

v.

NEONODE SMARTPHONE LLC,
Patent Owner.

IPR2021-00144
Patent 8,095,879 B2

Before KARA L. SZPONDOWSKI, CHRISTOPHER L. OGDEN, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

OGDEN, *Administrative Patent Judge*.

ORDER
Maintaining Sealed Documents Pending Appeal
37 C.F.R. § 42.56

Petitioner Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”) sent an email on January 11, 2023 requesting guidance on how to address the Board’s 45-day deadline for requesting that confidential information be expunged from the record.¹ Ex. 3003.

On November 30, 2022, we granted Samsung’s unopposed Motion to Seal which included the Patent Owner Response (Paper 37), Patent Owner Sur-reply (Paper 49), Exhibit 2026, and Exhibit 2028. *See* Paper 56. However, Samsung asserts that it “may want to rely on the contents of the sealed [material] on appeal.” Ex. 3003. Samsung represents that Patent Owner Neonode Smartphone LLC (“Neonode”) “does not oppose entry of an order in the [IPR2021]-00114 proceeding similar to that entered in the [IPR2021]-00145 proceeding.” Ex. 3003.

In that related proceeding, the Board denied Samsung’s motion to expunge similar documents and ordered the record preserved for appeal. *See Samsung Electronics Co. v. Neonode Smartphone LLC*, IPR2021-00145, Paper 75 (PTAB Sept. 23, 2022). For the reasons provided in that order, the sealed documents in this case should likewise be preserved pending any

¹ Ordinarily, “[c]onfidential information that is subject to a protective order would . . . become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial,” particularly “where the existence of the information is . . . identified in a final written decision.” PTAB Consolidated Trial Practice Guide 21–22 (Nov. 2019), <https://go.usa.gov/xpvPF>. But a party may file a motion to expunge the confidential information under 37 C.F.R. § 42.56. *Id.* at 22. This rule “balances the needs of the parties to submit confidential information with the public interest in maintaining a complete and understandable file history for public notice purposes.” *Id.*

appeal. *See id.* Although the Final Written Decision does not cite the information under seal, these documents may be relevant to any appeal, and it would be inappropriate for the Board to expunge the documents at this time.

Thus, we hereby extend the time period for filing a motion to expunge to 45 days after the conclusion of any appeal or remand proceedings, or—should no appeal be filed from the Final Written Decision in this case—45 days after the deadline for filing a notice of appeal. In the meantime, the record for this proceeding will be preserved in its entirety, and the confidential information will remain under seal.

Accordingly, it is

ORDERED that either party may file a motion to expunge any material in the record no later than (1) 45 days after the final disposition of any appeal or remand proceedings from any such appeal, or (2) 45 days after the deadline for filing a notice of appeal, whichever is later; and

FURTHER ORDERED that all information subject to the Protective Order in this proceeding (Paper 56; Paper 39, App'x A) will remain under seal until further notice.

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