

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

NEONODE SMARTPHONE LLC,  
Patent Owner.

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IPR2021-00145  
Patent 8,812,993 B2

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Before MICHELLE N. ANKENBRAND, KARA L. SZPONDOWSKI, and  
CHRISTOPHER L. OGDEN, *Administrative Patent Judges*.

OGDEN, *Administrative Patent Judge*.

ORDER  
Granting Joint Request for Entry of Protective Order  
*37 C.F.R. § 42.54*

With our authorization, Petitioners Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”) filed a Motion to Seal and for Entry of Protective Order. Paper 31. This motion included an initial proposed protective order that differs from the Board’s Default Protective Order.<sup>1</sup> *Id.* at 9–10, App’x A. Because the initial proposed protective order was not a joint submission as the Scheduling Order (Paper 25) requires, we ordered the parties to meet and confer with the goal of agreeing to a proposed protective order that the parties could submit jointly. Paper 34, 2.

On November 19, 2021, Samsung and Patent Owner Neonode Smartphone LLC (“Neonode”) jointly filed a second proposed protective order (Paper 36, App’x A). But as we previously determined, this proposal was inadequate because it was not a joint submission that included Petitioner Apple, Inc. (“Apple”) and, while it introduced a heightened confidentiality tier, it failed to retain the normal confidentiality category of the Default Protective Order. *See* Paper 46. Thus, we denied the aspect of the Motion relating to entry of a protective order, without prejudice. *See id.*

On December 17, 2021, the parties, including Apple, jointly submitted another Proposed Protective Order. Paper 50. The joint proposal (Paper 50, Attachment A) differs from the Default Protective Order in two significant ways. *See* Ex. 1059 (marked-up version comparing the proposal with the Default Protective Order).

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<sup>1</sup> “Protective Order Guidelines,” PTAB Consolidated Trial Practice Guide 107, App’x B (Nov. 2019), <https://go.usa.gov/xpvPF> (“Consolidated Trial Practice Guide”).

First, it adds to the normal confidentiality category a heightened confidentiality tier designated as “SAMSUNG-NEONODE-CONFIDENTIAL—APPLE ATTORNEY’S EYES ONLY” to cover material that “constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party and shared between the Samsung and Neonode Parties or their predecessors in interest.” Ex. 1059, 1. These documents are accessible to Apple’s outside counsel, but not to other Apple party representatives who were not involved in the preparation or drafting of the protected materials. *See id.* at 2–3.

Second, the joint proposal alters who may have access to material in the lower confidentiality tier: it allows persons with prior knowledge concerning the materials to continue to have access, regardless of their affiliation with a party in this proceeding. *See* Ex. 1059, 4; Paper 50, 2. The parties argue that this provision is warranted because “Neonode has submitted declarations from four third party witnesses who have already been deposed in this proceeding,” and these witnesses should have access to these declarations if they are designated according to the proposed lower confidentiality tier. Paper 50, 2.

We agree with the parties that there is good cause to enter the proposed protective order, and that the modifications to the Default Protective Order are reasonable under the circumstances. Thus, we grant the parties’ joint request to adopt Appendix A of Paper 50 as the Protective Order in this proceeding.

We remind the parties of the public’s interest in maintaining a complete and understandable file history. “There is an expectation that information will be made public where the existence of the information . . .

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is identified in a final written decision following a trial.” Consolidated Trial Practice Guide 22. However, a party seeking to maintain the confidentiality of information “may file a motion to expunge the information from the record prior to the information becoming public.” *Id.* (citing 37 C.F.R. § 42.56).

Accordingly, it is

ORDERED that the parties’ joint request for entry of the proposed Protective Order (Paper 50) is *granted*; and

FURTHER ORDERED that the jointly submitted Protective Order (Paper 50, App’x A) is hereby entered, and will govern the conduct of the proceeding unless modified by the Board.

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