

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD.,
SAMSUNG ELECTRONICS AMERICA, INC., AND
APPLE INC.

Petitioners

v.

NEONODE SMARTPHONE LLC,

Patent Owner

Case IPR2021-00145
U.S. Patent No. 8,812,993

SAMSUNG-PETITIONERS' OPPOSED MOTION TO EXPUNGE

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Patent Trial and Appeal Board
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Petitioners Samsung Electronics Co., Ltd., and Samsung Electronics

America, Inc. (“Samsung-Petitioners”) file this Motion to Expunge within 45 days from the final written decision (“FWD”), which was issued June 15, 2022 (Paper 68). *See* Patent Trial Appeal Board Consolidated Trial Practice Guide November 2019, p. 21-22. Samsung-Petitioners have conferred with Patent Owner and Petitioner Apple Inc. Petitioner Apple Inc. does not oppose this motion. Patent Owner opposes this motion to keep the record intact pending any appeal.

Samsung-Petitioners respectfully submit that the following confidential information be expunged from the record as they contain Samsung-Petitioners' highly confidential business information (collectively, “the Confidential Documents”), and were not relied upon in the Board's Final Written Decision:

- Exhibit 2025 – Samsung-Neonode Agreement
- Exhibit 2015 – Bystedt Declaration
- Paper 29 – Patent Owner's Response
- Exhibit 2028 – Patent Owner's Sur-reply

For the reasons set forth below, Samsung-Petitioners request that the Confidential Documents be expunged.

I. APPLICABLE LEGAL STANDARDS

37 C.F.R. § 42.56 provides that “[a]fter a denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge

confidential information from the record.” Similarly, the Consolidated Trial Practice Guide states, in pertinent part, that “[t]here is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial. A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.”

Consolidated Trial Practice Guide, p. 22. A party seeking expungement from the record must show good cause by demonstrating “that any information sought to be expunged constitutes confidential information, and that Petitioner’s interest in expunging it outweighs the public’s interest in maintaining a complete and understandable history of this *inter partes* review.” *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 97 at 2 (P.T.A.B. Apr. 15, 2015).

II. REASONS FOR RELIEF REQUESTED

A. Procedural Background

As explained in Samsung-Petitioners’ Motion to Seal (Paper 31), Exhibit 2025 is an agreement that contains confidential Samsung information. Exhibit 2015 (Bystedt Declaration), Patent Owner’s Response (Paper 29), and

Patent Owner's Sur-reply (confidential version at Exhibit 2028) recite confidential, non-public terms of that agreement.

Redacted versions of Exhibit 2015, Patent Owner's Response, and Patent Owner's Sur-reply are available to the public, and information regarding the contents of the redacted and sealed information is in the record, as detailed in the following table:

Confidential Version	Redacted, Public Version	Information Regarding Redacted Content
Paper 29	Exhibit 1047	Exhibit 1047, 76-77; Paper 55 at 26-27.
Exhibit 2028	Paper 55	Exhibit 1047, 76-77; Paper 55 at 26-27.
Exhibit 2015	Exhibit 1048	Exhibit 1047, 76-77; Paper 55 at 26-27.
Exhibit 2025	<i>Sealed in its entirety</i>	Exhibit 1047, 76-77; Paper 55 at 26-27.

On June 15, 2022, the Board issued its final written decision ("FWD"). Paper 68. The FWD itself does not contain any confidential information. *See* FWD-Public Version, Paper 71. None of the Board's analyses in its FWD are confidential. *Id.*

B. Good Cause Exists for Expunging the Confidential Documents

As detailed in Samsung-Petitioners' Motion to Seal (Paper 31), the Confidential Documents contain Samsung-Petitioners' highly confidential business information. Indeed, the Board has already determined that good cause exists to seal the Confidential Documents (Paper 53). As recognized in the Board's Order

granting Samsung-Petitioners' motion to seal, Exhibit 2025 in this matter "includes sensitive information that could apprise Samsung's competitors of its business models and confidential business activities." Paper 53 at 4-5. If Exhibit 2025 or its details are disclosed, Samsung-Petitioners would suffer concrete harm by giving its competitors proprietary information. *Id.* at 5. The Board also recognized that the declaration of Mr. Bystedt (Exhibit 2015) and Patent Owner's Response (Paper 29) make limited evidentiary use of Exhibit 2025, and there is good cause to seal references to the terms of Exhibit 2025 in those documents. *Id.* Good cause also exists to seal references to the terms of Exhibit 2025 in Patent Owner's Sur-reply for at least the same reasons.

Given the information available in the record regarding the contents of the Confidential Documents, and, in particular, Exhibit 2025, and the lack of reliance by the Board on the specific terms of the agreement, the record provides a "complete and understandable file history for public notices purposes," so there is no public interest in now making the Confidential Documents publicly available. Consolidated Trial Practice Guide at 21-22; *accord* MPEP § 724.05 (Patent Office may expunge information that is not material to patentability); *see also* Paper 53 at 5. Accordingly, good cause exists for protecting Petitioners' confidential information by expunging the Confidential Documents.

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