

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.

IPR2021-00145
Patent 8,812,993 B2

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

OGDEN, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

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 includes a Proposed Protective Order that differs from the Board’s default protective order. *Id.* at 9–10, App’x A. Samsung’s Proposed Protective Order is not a joint filing with either Patent Owner Neonode Smartphone LLC (“Neonode”) or joint Petitioner Apple, Inc. *See id.* at 1. Neonode filed a Response opposing Samsung’s motion. Paper 32. Although Neonode opposes both the sealing of documents and entry of the protective order, Neonode does not address *why* it opposes Samsung’s Proposed Protective Order, or suggest an alternative protective order. *See generally id.*

The Scheduling Order for this proceeding states that “[i]f either party files a motion to seal before entry of a protective order, the parties must *jointly* file a proposed protective order as an exhibit with the motion.” Paper 25, 2–3 (emphasis added). Also, if the proposed protective order differs from the default protective order, the parties must also jointly submit “a marked-up comparison of the proposed and default protective orders showing the differences between the two and explain why good cause exists to deviate from the default protective order.” *Id.* at 3. The parties have not done this.

Thus, we order the parties to meet and confer, in good faith, with the goal of agreeing to a joint proposed protective order. If the parties agree to a joint submission, Samsung must file the proposed protective order (or indicate agreement with the Board’s default protective order) as a joint submission with the assent of all parties by November 19, 2021. This submission must also include any other supporting material that the Scheduling Order requires, such as a marked-up comparison between the

proposed and default protective orders and a joint explanation why good cause exists to deviate from the default protective order. *See* Paper 25, 2–3; *see also* Patent Trial and Appeal Board Consolidated Trial Practice Guide 115 (Nov. 2019), <https://go.usa.gov/xpvPF> (“The Board will presumptively accept agreed-to changes that provide additional categories of confidentiality as long as they are reasonable and adequately define what types of materials are to be included in the additional categories”).

Alternatively, if the parties cannot agree on a proposed protective order, Samsung must, by November 19, 2021, request a conference call with the Board and the parties to discuss the reasons why the parties have been unable to reach agreement on a proposed protective order.

Accordingly, it is

ORDERED that, by November 19, 2021, the parties must meet and confer, in good faith, with the goal of agreeing to a joint proposed protective order;

FURTHER ORDERED that, Samsung must submit any agreed joint proposed protective order by November 19, 2021, and must include any other material that the Scheduling Order requires, such as a marked-up comparison between the proposed and default protective orders and a joint explanation why good cause exists to deviate from the default protective order, as explained above;

FURTHER ORDERED that, if the parties fail to reach agreement on a joint proposed protective order, Samsung must, by November 19, 2021, request a conference call with the Board and the parties to discuss the reasons why the parties have been unable to reach agreement; and

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FURTHER ORDERED that the Board will address Samsung's Motion to Seal (Paper 31) at a later time.

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