

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

NANOCO TECHNOLOGIES LTD.,
Patent Owner.

Case No. IPR2021-00186
U.S. Patent No. 8,524,365

**PATENT OWNER'S MOTION TO SEAL AND TO ENTER DEFAULT
PROTECTIVE ORDER PURSUANT TO 37 C.F.R. § 42.54**

I. STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Nanoco Technologies Ltd. (“Nanoco” or “Patent Owner”) respectfully submits this motion to seal portions of its Patent Owner Response (“Response”) and Exhibit 2030 (Declaration of Brandi Cossairt Ph.D. Aug. 12, 2021) (“Expert Declaration”), as well as the entirety of Exhibit 2032 (Excerpts of the June 10, 2021 Rebuttal Expert Report of Mounji Bawendi, Ph.D.) (“Bawendi Rebuttal Expert Report”) and Exhibit 2034 (Excerpts of the June 16, 2021 Deposition Transcript of Mounji G. Bawendi, Ph.D.) (“Bawendi Transcript”), which are being filed concurrently with this Motion. Sealing the material set forth below is required to maintain confidentiality designations made by Petitioner Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (“Samsung” or “Petitioner”) during the related district court proceeding, Nanoco Technologies Ltd. v. Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc., C.A. No. 2:20-cv-00038-JRG (E.D. Tex.) (the “District Court Proceeding”).

Nanoco further requests entry of the Board’s Default Protective Order attached as Appendix 1.

The parties have not met and conferred on this Motion. On August 10, 2021, counsel for Nanoco contacted counsel for Petitioner by email and requested de-designation of certain portions of Exhibit 2032 and Exhibit 2034 that Nanoco

planned to submit with its Patent Owner Response and Expert Declaration. As of the time of this filing, Nanoco has not yet received a response from counsel for Petitioner to Nanoco's August 10, 2021 request for de-designation.

II. LEGAL STANDARD FOR SEALING THE IDENTIFIED INFORMATION

Documents filed in an IPR are generally available to the public. 37 C.F.R. § 42.14. However, the Board may, for good cause, protect confidential information from public disclosure. 37 C.F.R. § 42.14; *see also Garmin Int'l v. Cuozzo Speed Tech., LLC*, IPR2012-00001, Paper 36 at 3-4 (PTAB Apr. 5, 2013). Where possible, parties should redact sensitive information from their filings, rather than seek to seal entire documents. Office Trial Practice Guide, 77 Fed. Reg. 48756, 48761 (2012).

When determining good cause, the Board must balance the public's interest in a complete and understandable file history with the party's interest in protecting sensitive information. *See Garmin*, IPR2012-00001, Paper 36, 3-4 (citing Office Trial Practice Guide, 77 Fed. Reg. at 48760). However, the public's interest in having access to a party's confidential business that is only indirectly related to patent validity is "minimal." *Id.* at 8-9 (granting the patent owner's motion to seal an agreement relating to the "commercializ[ation]" of the patent-at-issue).

Nanoco is submitting excerpts of the Bawendi Rebuttal Expert Report (Exhibit 2032) and the Bawendi Transcript (Exhibit 2034) with its Response and

Expert Declaration. Nanoco's Response and Expert Declaration also reference and include content from these same documents. The Bawendi Rebuttal Expert Report excerpts and the Bawendi Transcript excerpts to be sealed were designated as confidential by the Petitioner during the District Court Proceeding pursuant to a protective order, and Nanoco's request is based on the need to respect that designation and maintain the non-disclosure of information, at least until such time as Petitioner responds to Nanoco's request for de-designation.¹ The Response and Expert Declaration also include and quote information from those same exhibits (Exhibits 2032 and 2034). *See, e.g.*, Paper No. 25 at pp. 2, 34-36; Exhibit 2030 ¶109.

In addition, pursuant to paragraph 5(A)(ii) of the Default Protective Order, Patent Owner has filed a redacted version of the Response (*see* Paper No. 26) and Expert Declaration in an attempt to minimize the impact on the public's interest in maintaining a complete and understandable record.

¹ It is Nanoco's position that there is no basis to designate any of the cited portions of the Bawendi Rebuttal Expert Report and the Bawendi Transcript as confidential under any protective order, but Nanoco is filing this motion out of respect for the District Court protective order and in light of the fact that Nanoco has not yet received a response from counsel for Petitioner to Nanoco's August 10, 2021 request for de-designation.

III. CERTIFICATION OF CONFERENCE PURSUANT TO 37 C.F.R. § 42.54

Nanoco has attempted to confer in good faith with Petitioner regarding the confidentiality designation attached to Exhibit 2032 and Exhibit 2034 to determine if this motion to seal was necessary. As of the date of this filing, Nanoco has not received a substantive response from Petitioner regarding those exhibits. As such, Nanoco respectfully requests that the Board enter Default Protective Order in this proceeding.

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