

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

NEONODE SMARTPHONE LLC,
Patent Owner.

IPR2021-01041
Patent 8,095,879 B2

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

OGDEN, *Administrative Patent Judge*.

DECISION
Granting Unopposed Motions to Seal and
for Entry of Joint Proposed Protective Order
37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

With our authorization, Patent Owner Neonode Smartphone LLC (“Neonode”) filed an unopposed Motion to Seal. Paper 31 (“Mot.”). Neonode represents that the Motion “is unopposed by Petitioner Google LLC [(‘Google’)] and also unopposed by interested third party, Samsung Electronics Co. Ltd., Samsung Electronics America, Inc. (collectively ‘Samsung’).” Mot. 1. The Motion seeks to restrict access to the Patent Owner Response and Exhibits 2014 and 2055, and to expunge Exhibit 2011. Mot. 1. The Motion also includes a joint Proposed Protective Order agreed by the parties. Ex. 2059; Ex. 2058 (redline version). For the reasons below, the Motion is *granted*.

A. PROPOSED PROTECTIVE ORDER

The joint Proposed Protective Order differs from the Default Protective Order in two significant ways. *See* Ex. 2058 (marked-up version comparing the proposal with the Default Protective Order). First, it adds to the normal confidentiality category a heightened confidentiality tier designated as “SAMSUNG-NEONODE-CONFIDENTIAL—GOOGLE 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. 2059, 1. These documents are accessible to Google’s outside counsel, but not to other Google party representatives unless they were involved in the preparation or drafting of the protected materials. *See id.* at 2–3.

Second, the 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. 2059, 4.

Neonode notes that these alterations mirror those made in a protective order the Board approved in a related proceeding involving similar documents and confidentiality issues. Mot. 2–3 (citing *Samsung Electronics Co. v. Neonode Smartphone LLC*, IPR2021-00145, Paper 52 (PTAB Jan. 5, 2022)).

For the reasons the Board outlined in its order granting the proposed protective order in the related *inter partes* review, we agree 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. *See* IPR2021-00145, Paper 52, at 2–3. Thus, we *grant* Neonode’s unopposed request to enter the Proposed Protective Order by adopting Exhibit 2059 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 . . . is identified in a final written decision following a trial.” Consolidated Trial Practice Guide 22 (Nov. 2019), <https://go.usa.gov/xpvPF>. 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).

B. MOTIONS TO SEAL

Neonode also seeks an order to seal and restrict access under the Protective Order as “SAMSUNG-NEONODE-CONFIDENTIAL—GOOGLE ATTORNEY’S EYES ONLY” to a portion of Neonode’s Patent Owner Response (Paper 29, of which a public redacted version is submitted as Exhibit 2060¹), a portion of Exhibit 2055 (of which a public redacted version is submitted as Exhibit 2061), and the entirety of Exhibit 2014. Mot. 1. Neonode also seeks to expunge Exhibit 2011, currently filed under seal, because “the as-filed copy is not fully legible, and is re-filed under seal as Exhibit 2055 in identical form. Exhibit 2011 is not cited, or otherwise relied upon, in the Patent Owner Response or other documents accompanying it.” Mot. 1.

For a motion to seal confidential information, the moving party has the burden to show that there is good cause for the request to seal. *See* 37 C.F.R. §§ 42.20(c), 42.14. A party can show good cause by (1) providing a sufficient explanation as to why the information sought to be sealed is confidential and (2) showing that, on balance, the harm to a party by disclosure of the information, as well as the need of either party to rely specifically on the information at issue, outweighs the public interest in maintaining a complete and understandable record. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative) (citing *Corning Optical Commc ’ns RF, LLC, v. PPC*

¹ In the future, counsel should file the public version of a paper as a paper, not an exhibit.

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Broadband, Inc., IPR2014-00440, Paper 46, 2; Paper 47, 3 (PTAB April 6 and 14, 2015)).

According to Neonode, Exhibit 2014 “is a license agreement between Patent Owner Neonode and third-party Samsung.” Mot. 1. Neonode notes that in a co-pending matter, the Board held that this agreement is “currently confidential, and that making any part of it available to the public would cause harm to Samsung that outweighs the benefit to the public of maintaining a complete and understandable record.” Mot. 1–2 (citing *Samsung Elecs. Co. Ltd. et al. v. Neonode Smartphone LLC*, IPR2021-00145, Paper 53, at 5 (Jan. 5, 2022)).

We agree for the reasons outlined by the Board in the related proceeding. Thus, there is good cause to seal Exhibit 2014 and references to its terms made in the Patent Owner Response and Exhibit 2055. There is also good cause to expunge sealed Exhibit 2011 because a better copy already exists on the record as Exhibit 2055.

For the above reasons, the Motion is *granted*.

II. ORDER

In consideration of the foregoing, it is
ORDERED that Neonode’s request for entry of the Proposed Protective Order (Ex. 2059) is *granted*;

FURTHER ORDERED that the Proposed Protective Order (Ex. 2059) is entered as the Protective Order in this proceeding, and will govern the conduct of the proceeding unless modified by the Board;

FURTHER ORDERED that the Motion to Seal (Paper 31) is *granted*;

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