

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*.

ORDER
Maintaining Sealed Documents Pending Appeal
37 C.F.R. § 42.56

Patent Owner Neonode Smartphone LLC (“Neonode”) sent an email on January 26, 2023 requesting an order similar to that in related proceeding *Samsung Electronics Co. v. Neonode Smartphone LLC*, IPR2021-00144, Paper 60 (PTAB Jan. 19, 2023), which preserves the record pending any appeal.¹ Ex. 3001. Neonode indicates that Petitioner Google LLC does not oppose this request. *Id.*

The Board also entered an order in related case *Samsung Electronics Co. v. Neonode Smartphone LLC*, IPR2021-00145, Paper 75 (PTAB Sept. 23, 2022), which involved similar documents. For the reasons provided in that order, the sealed documents in this case should likewise be preserved pending any appeal. *See id.* Although the Final Written Decision in this proceeding does not cite the information under seal, these documents may be relevant to any appeal, and it would be inappropriate for the Board to expunge the documents at this time.

Thus, we hereby extend the time period for filing a motion to expunge to 45 days after the conclusion of any appeal or remand proceedings, or—should no appeal be filed from the Final Written Decision in this case—45 days after the deadline for filing a notice of appeal. In the meantime, the

¹ Ordinarily, “[c]onfidential information that is subject to a protective order would . . . become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial,” particularly “where the existence of the information is . . . identified in a final written decision.” PTAB Consolidated Trial Practice Guide 21–22 (Nov. 2019), <https://go.usa.gov/xpvPF>. But a party may file a motion to expunge the confidential information under 37 C.F.R. § 42.56. *Id.* at 22. This rule “balances the needs of the parties to submit confidential information with the public interest in maintaining a complete and understandable file history for public notice purposes.” *Id.*

IPR2021-01041
Patent 8,095,879 B2

record for this proceeding will be preserved in its entirety, and the confidential information will remain under seal.

Accordingly, it is

ORDERED that either party may file a motion to expunge any material in the record no later than (1) 45 days after the final disposition of any appeal or remand proceedings from any such appeal, or (2) 45 days after the deadline for filing a notice of appeal, whichever is later; and

FURTHER ORDERED that all information subject to the Protective Order in this proceeding (Paper 51; Ex. 2059) will remain under seal until further notice.

IPR2021-01041
Patent 8,095,879 B2

For PETITIONER:

Erika Arner
Kevin Rodkey
Yi Yu
Wei Yuan

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP

erika.arner@finnegan.com
kevin.rodkey@finnegan.com
yi.yu@finnegan.com
wei.yuan@finnegan.com

For PATENT OWNER:

Parham Hendifar
Kenneth Weatherwax
Nathan Lowenstein
LOWENSTEIN & WEATHERWAX LLP
hendifar@lowensteinweatherwax.com
weatherwax@lowensteinweatherwax.com
lowenstein@lowensteinweatherwax.com

Philip Graves
GRAVES & SHAW LLP
pgraves@gravesshaw.com