

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICRON TECHNOLOGY, INC.,
Petitioner,

v.

VERVAIN, LLC,
Patent Owner.

IPR2021-01547
Patent 8,891,298 B2

Before STACEY G. WHITE, JON M. JURGOVAN, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

JURGOVAN, *Administrative Patent Judge*.

ORDER

Granting Motion to Seal and Entering Protective Order
37 C.F.R. §§ 42.14 and 42.54

On September 30, 2022, Petitioner filed a Motion to Seal. *See* Paper 23 (“Mot.”). The Motion seeks entry of the Default Protective Order of Appendix B of the Trial Practice Guide and sealing of Exhibit 1063 in its entirety. Mot. 1. Petitioner indicates that Exhibit 1063 is Patent Owner’s Infringement Contentions from *Vervain, LLC v. Micron Technology, Inc.*, Case No. 6:21-cv-00487 (W.D. Tex. filed May 10, 2021) in which U.S. Patent 8,891,298 B2 and other patents were asserted against Petitioner’s eMMC products. Paper 1 (“Pet.”), 4. Patent Owner has not filed any opposition to the Motion, and the period for doing so has expired. *See* 37 C.F.R. § 42.25(c). As discussed below, we grant Petitioner’s Motion.

The Rules provide that the record of a proceeding, including documents and things, is made available to the public except that a party may seek to seal a document or thing by filing a motion, as Petitioner did here. 37 C.F.R. § 42.14. The proponent, who is generally the party seeking to protect its information, must show “good cause” to seal a document or thing to preserve its confidentiality. 37 C.F.R. § 42.54.

Petitioner contends that “good cause” exists for sealing Exhibit 1063 because “it contains highly detailed, sensitive, confidential, and non-public information concerning the design, development, functionality, and operation” of Petitioner’s eMMC product (such as the internal controllers of the eMMC products). Mot. 1–2. Particularly, Petitioner contends that Exhibit 1063 details the operation of Petitioner’s firmware with respect to wear leveling techniques. Petitioner states that it guards such information closely and has not made, and does not intend to make, this information publicly available. Petitioner certifies that the information sought to be sealed by its motion has not been published or otherwise made publicly available. Mot. 2. Petitioner further certifies it has conferred in good faith

with Patent Owner who does not oppose Petitioner's Motion to Seal. Mot. 3.

After reviewing the record, we find that "good cause" exists to protect Petitioner's confidential information, and we grant Petitioner's Motion for entry of the Default Protective Order and Motion to Seal Exhibit 1063.

We remind the parties that confidential information that is subject to a protective order ordinarily becomes public forty-five (45) days after final judgment in a trial. *See* Trial Practice Guide, 77 Fed. Reg. at 48,761. There is an expectation that information will be made public when the existence of the information is identified in a final written decision following a trial. *Id.* After final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public in accordance with 37 C.F.R. § 42.56.

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Motion to Seal (Paper 23) is *granted*;

FURTHER ORDERED that the confidential version of Exhibit 1063 shall remain sealed and designated as "Board and Parties Only" until further notice; and

FURTHER ORDERED that the Protective Order set forth in Exhibit A of Petitioner's Motion to Seal is entered as the protective order governing this proceeding.

IPR2021-01547
Patent 8,891,298 B2

PETITIONER:

Jeremy Jason Lang
Christopher Childers
Parth Sagdeo
Jared Bobrow
ORRICK, HERRINGTON & SUTCLIFFE LLP
PTABDOCKETJL2@ORRICK.COM
PTABDOCKETC4C8@ORRICK.COM
PTABDocketP2S7@orrick.com
PTABDocketJ3B3@orrick.com

PATENT OWNER:

Alan Whitehurst
Kathy H. Li
James E. Quigley
Christopher P. McNett
McKOOL SMITH, P.C.
awhitehurst@mckoolsmith.com
kli@mckoolsmith.com
jqigley@mckoolsmith.com
cmcnett@mckoolsmith.com