

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MASIMO CORPORATION,
Patent Owner.

IPR2022-01291 (Patent 10,687,745 B1)
IPR2022-01465 (Patent 10,687,745 B1)¹

Before JOSIAH C. COCKS, GEORGE R. HOSKINS, and
ROBERT A. POLLOCK, *Administrative Patent Judges*.

HOSKINS, *Administrative Patent Judge*.

ORDER
Granting Patent Owner's and Petitioner's Motions to Seal
37 C.F.R. §§ 42.14 and 42.54

¹ This order is being filed in each proceeding listed in the caption, due to the common issues addressed. The parties are not authorized to use a combined caption in these proceedings.

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I. INTRODUCTION

In each of these two proceedings, Masimo Corporation (“Patent Owner”) and Apple Inc. (“Petitioner”) have each filed a Motion to Seal certain documents. *See, e.g.*, IPR2022-01291, Paper 30 (“PO Mot.”), Paper 38 (“Pet. Mot.”).² All four Motions are unopposed.³ For the following reasons, we *grant* all four Motions.

II. PATENT OWNER’S MOTIONS

A. Documents At Issue

Patent Owner’s Motions request that we seal Paper 28 and Exhibits 2070, 2076–2086, 2089, 2090, and 2093 in each proceeding. *See* PO Mot. 1.

Specifically, Exhibits 2076–2086, 2089, 2090, and 2093 in each proceeding (“the ITC Documents”) are documents Petitioner produced in these two *inter partes* review proceedings, in response to Patent Owner’s Motion for Additional Discovery (Paper 20) which was granted-in-part (Paper 23). *See* PO Mot. 1. The ITC Documents “consist[] of [Petitioner’s] documents and its engineers’ testimony during the June 6–10, 2022 hearing in the ITC investigation, *Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276 (ITC) (‘ITC Investigation’).” PO Mot. 1, 4–5. “All of the information that [Patent Owner] moves to seal was designated by [Petitioner] in the ITC

² For expediency, this Order cites to papers filed in IPR2022-01291, unless noted otherwise. Similar papers were also filed in IPR2022-01465.

³ When Patent Owner’s Motions were filed, it was not clear whether Petitioner might oppose (*see* PO Mot. 1), but the time for Petitioner to file an opposition has now passed. Petitioner’s Motions state they are unopposed (*see* Pet. Mot. 1–2).

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Investigation as containing” Petitioner’s confidential business information. *Id.* at 1. The ITC Documents have been provisionally filed under seal pending the Board’s decision on Patent Owner’s Motion.

Exhibit 2070 in each proceeding is a Declaration of Dr. R. James Duckworth prepared in support of Patent Owner’s arguments in both proceedings, discussing information found in the ITC Documents. Patent Owner filed two versions of Exhibit 2070: an unredacted version provisionally filed under seal pending the Board’s decision on Patent Owner’s Motions, and a redacted version to be viewed by the public.

Paper 28 in each proceeding is the Patent Owner Response in the respective proceeding, discussing information found in the ITC Documents. Patent Owner provisionally filed Paper 28 under seal pending the Board’s decision on Patent Owner’s Motions. Patent Owner also filed a redacted version of Paper 28 (i.e., Paper 29) to be viewed by the public.

B. Analysis and Conclusion

Patent Owner asserts good cause exists for maintaining the indicated documents under seal. *See* PO Mot. 2–3. According to Patent Owner, the documents contain Petitioner’s confidential information. *See* PO Mot. 3–5. Patent Owner further represents that “[i]nformation that previously became public through public filings in the ITC Investigation [has] not been redacted.” *Id.* at 3.

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The party moving to seal bears the burden to show entitlement to the requested relief, and to establish that information sought to be sealed is confidential information. *Id.* § 42.20(c). The “good cause” standard reflects the strong public policy for making all information in an *inter partes*

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review open to the public. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3 (PTAB Jan. 19, 2018) (informative).

When assessing whether the standard has been met, we may consider whether the information at issue is truly confidential, whether harm would result upon public disclosure, and whether the interest in maintaining confidentiality as to the information outweighs the strong public interest in an open record. *Id.* at 3–4.

We have reviewed the documents at issue, and we conclude they reflect Petitioner’s confidential technical and business information. We also conclude Patent Owner’s filing of redacted versions of Paper 28 and Exhibit 2070 is sufficient to notify the public of the general thrust of Patent Owner’s reliance on the ITC Documents as relating to Patent Owner’s assertions that Petitioner has failed to demonstrate a reasonable expectation of success, either: (1) in combining the prior art to measure oxygen saturation at the wrist (IPR2022-01291, Paper 29, at 1–2, 28–40; IPR2022-01465, Paper 29, at 37–40); and/or (2) in adding oxygen saturation measurements to Iwamiya’s device in light of Sarantos (IPR2022-01465, Paper 29, at 36–37). Similarly, as Patent Owner points out, some of the witness testimony from the ITC Investigation is publicly available through other means. *See* PO Mot. 4 (public portions of witness testimony in Exs. 2076–2079 can be found in Ex. 2008), 5 (public portion ITC Final Initial Determination in Ex. 2093 can be found in Ex. 1033).

Under these circumstances, we agree with Patent Owner’s argument that granting Patent Owner’s Motions strikes the right balance “between the public’s interest in maintaining a complete and understandable file history

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and the parties' interest in protecting truly sensitive information.”

Consolidated Trial Practice Guide (Nov. 2019) (“CTPG”)⁴, 19.

We determine good cause exists for granting Patent Owner's Motions.

III. PETITIONER'S MOTIONS

A. *Documents At Issue*

Petitioner's Motions request that we seal Paper 40 and Exhibits 1036, 1037, 1042, and 1059 in each proceeding. *See* Pet. Mot. 1–2.

Specifically, Exhibits 1036 and 1037 in each proceeding are transcripts of witness testimony from the ITC Investigation (“Further ITC Testimony”). *See, e.g.*, Pet. Mot. 3. This testimony, according to Petitioner, was provided “in closed session at the ITC and include[d] questioning and testimony related to Apple's Watch products, including sensitive, proprietary research and development (R&D) information, trade secrets, proprietary processes and apparatuses, and confidential business operations information.” *Id.* at 4–5. Petitioner filed two versions of Exhibits 1036 and 1037: an unredacted version provisionally filed under seal pending the Board's decision on Petitioner's Motions, and a redacted version to be viewed by the public.

Exhibit 1042 in each proceeding is a Declaration of Dr. Brian Anthony prepared in support of Petitioner's arguments in both proceedings, discussing information found in the ITC Documents and the Further ITC Testimony. *See, e.g.*, Pet. Mot. 3–4. Petitioner filed two versions of Exhibit 1042: an unredacted version provisionally filed under seal pending

⁴ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>

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