

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

XILINX, INC., ADVANCED MICRO DEVICES, INC.,
and ATI TECHNOLOGIES ULC
Petitioner,
v.

SENTIENT SENSORS LLC
Patent Owner.

Case IPR2023-00195
U.S. Patent No. 6,938,177

**PATENT OWNER'S MOTION TO SEAL AND FOR A
PROTECTIVE ORDER PURSUANT TO 37 C.F.R. §§ 42.14 & 42.54**

Patent Owner Sentient Sensors LLC moves to seal Exhibits 2001, 2016, and 2017 (collectively, “Exhibits”) filed at the Patent Trial and Appeal Board with its June 23, 2023 Patent Owner Preliminary Response to Petitioners Xilinx, Inc., Adv. Micro Devices, Inc., and ATI Technologies ULC’s March 24, 2023 Petition for *Inter Partes* Review of U.S. Patent No. 6,938,177 (“’177 patent”). Patent Owner also moves for entry of the PTAB’s Default Protective Order (attached as Appendix A). Patent Owner requests that the Exhibits be treated as confidential under the Default Protective Order. For the reasons set forth below, good cause exists to seal the Exhibits.

I. DOCUMENTS TO BE SEALED

On August 2, 2023, the panel issued an Order (Paper 7) requiring Patent Owner to file a motion to seal the Exhibits in compliance with 37 C.F.R. § 42.14 and proposed protective order within seven days of the Order. That Order was entered after an August 1, 2023, teleconference between the panel and the parties initiated by the parties’ joint July 29, 2023 email (Ex. 3001).

Exhibits 2001 and 2017 are confidential documents created by the United States Air Force Research Laboratory regarding the development of the ’177 patent. *See* ’177 patent at 1:1-30. Good cause exists to seal Exhibits 2001 and 2017.

With respect to Exhibit 2016, Sentient has already agreed to file an unredacted copy and is in the process of updating its filings. Petitioner has been provided an

unredacted copy of the Exhibit. Patent Owner includes Exhibit 2016 here out of completeness and to comply with the Order but does not believe the parties have a dispute about it.

II. GOOD CAUSE FOR SEALING THE IDENTIFIED DOCUMENTS

When enacting *inter partes* reviews (“IPRs”), Congress directed the Board to “provid[e] for protective orders governing the exchange and submission of confidential information.” 35 U.S.C. § 316(a)(7). Thus, “[t]he Board may, for good cause, issue an order to protect a party or person from disclosing confidential information . . .” 37 C.F.R. § 42.54(a). In *Argentum Pharmaceuticals LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018), the Board set forth the standard for sealing confidential information:

[A] movant to seal must demonstrate adequately that

- (1) the information sought to be sealed is truly confidential,
- (2) a concrete harm would result upon public disclosure,
- (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and
- (4) on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

Id. at 3 (“the *Argentum* Factors”). The *Argentum* Factors support granting this motion.

Factor 1. Exhibit 2001 is a Cooperative Research and Development Agreement (“CRADA”) between the U.S. Air Force Research Laboratory, Space Vehicles Directorate, and Management Sciences, Inc., the managing member of Patent Owner Sentient Sensors (Ex. 2016). The terms of the CRADA at section 11.4 requires Air Force approval to disclose the existence of the agreement, making it confidential. The CRADA also includes terms related to research and development, sensitive business information, and financial information, which should remain confidential absent approval from the Air Force to make it public.

Exhibit 2017 is a private letter from Mr. James Lyke written in his official capacity as a GS-13 grade Air Force scientist to the Defense Advanced Research Projects Agency (“DARPA”) regarding an endorsement for Mr. Blemel to improve the AIC technology (which directly relates to the ’177 patent). As neither the intended recipient nor the original author, Patent Owner lacks authority to unilaterally make it public absent approval from the Air Force.

Patent Owner contacted the Air Force prior to the teleconference with the Board seeking its approval to make Exhibits 2001 and 2017 public but, as of the filing of this Motion, no approval has been provided.

Factor 2. A concrete harm would result upon public disclosure. Patent Owner and MSI are small family-owned businesses founded by Mr. Blemel and his wife of 63 year, Marlene (“Kay”) Blemel. For over 50 years, Mr. Blemel has operated his small business in New Mexico providing high-tech specialty solutions for military and aerospace applications and successfully guiding multiple research and development programs for, among others, the U.S. Air Force and other branches of the U.S. military. Patent Owner receives a substantial amount of work from the U.S. government and military through the Small Business Innovation Research (“SBIR”) program and Small Business Technology Transfer (STTR) program. Making the Exhibits public without first obtaining approval from the Air Force could potentially tarnish the relationship that Patent Owner has with the military and potentially impact future opportunities through the SBIR/STTR programs.

Factor 3. There is a genuine need to rely on the material in the Exhibits. The CRADA and the private letter from Mr. Lyke are part of the intrinsic record of the ’177 patent. The CRADA is mentioned in the first paragraph of the ’177 patent at 1:5-10. U.S. Patent No. 6,148,399 (“’399 patent”) to Lyke, and the AIC described therein, was considered in great detail during the prosecution of the ’177 patent and is also discussed in the DESCRIPTION OF THE PRIOR ART section of that patent. ’177 patent at, *e.g.*, 1:21-29. Exhibit 2017 is a letter from Mr. Lyke endorsing Mr. Blemel’s proposal to improve on the ’399 patent and its AIC.

Petitioners' arguments that these documents should be expunged because they are irrelevant or that Patent Owner somehow mischaracterized their content is unsubstantiated. Even designated as confidential, the documents provide valuable insight and context as intrinsic evidence to the development of the inventions improving on the AIC disclosed in the '177 patent. To expunge them because the Air Force has not yet given consent to make them public is an extreme sanction.

Factor 4. On balance, the interest in maintaining the Exhibits' confidentiality outweighs the strong public interest in having an open record. Unless and until Patent Owner receives approval from the Air Force to make the Exhibits public, their designations as confidential should remain. Further, Petitioners have provided no legitimate reason for making the Exhibits public without Air Force approval. If Petitioners seek the ability to show the Exhibits to their client's in-house counsel, they may do so under the terms of the Default Protective Order submitted herewith.

III. RULE 42.54(A) CERTIFICATION

Patent Owner hereby certifies that it has in good faith conferred or attempted to confer with Petitioners in an effort to resolve the dispute. Petitioners do not object to the use of the PTAB default protective order.

IV. CONCLUSION

For the foregoing reasons, Patent Owner requests this Motion be granted and that the designated materials remain sealed.

Dated: August 9, 2023

Respectfully submitted,

ELLENOFF GROSSMAN & SCHOLE LLP

/s/ Michael E. Shanahan

Michael E. Shanahan
(Reg. No. 43,914)
1345 Ave. of the Americas, 11th Fl.
New York, NY 10105
(212-370-1300
mshanahan@egsllp.com

*Attorney for Patent Owner, Sentient
Sensors LLC*

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 37 C.F.R. § 42.6(e) and with the agreement of counsel for Petitioner, a true and correct copy of **PATENT OWNER'S PRELIMINARY RESPONSE AND EXHIBITS 2001-2018** are being served electronically on August 9, 2023, to the e-mail addresses shown below:

David Hoffman (hoffman@fr.com)

Kenneth Darby (kdarby@fr.com)

Craig Deutsch (deutsch@fr.com)

Dated: August 9, 2023

Respectfully submitted,

ELLENOFF GROSSMAN & SCHOLE LLP

/s/ Michael E. Shanahan

Michael E. Shanahan
(Reg. No. 43,914)
1345 Ave. of the Americas, 11th Fl.
New York, NY 10105
(212-370-1300
mshanahan@egsllp.com

*Attorney for Patent Owner, Sentient
Sensors LLC*

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APPENDIX A

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[PROPOSED] PROTECTIVE ORDER

This protective order governs the treatment and filing of confidential information in the proceeding, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL.”

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

- a. Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.
- b. Party Representatives. Representatives of record for a party in the proceeding.
- c. Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.
- d. In-House Counsel. In-house counsel for a party.
- e. Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting

who receives confidential information.

- f. The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. Employees (*e.g.*, corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in (2)(A)-(E), shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person and after signing the Acknowledgment. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

4. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

- a. Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;
- b. Otherwise using reasonable efforts to maintain the

confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

- c. Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and
- d. Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

- a. Documents and Information File With the Board.
 - i. A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge

the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

- ii. Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

b. Documents and Information Exchanged Among the Parties.

Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains its confidentiality.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

7. Standard Acknowledgment of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

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Standard Acknowledgment for Access to Protective Order Material

I, _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

[Signature]