

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT TRIAL AND APPEAL BOARD

IN RE PATENT OF:

XILINX,

PETITIONER,

V.

SENTIENT SENSORS, LLC

PATENT OWNER.

CERTIFIED COPY

U.S. PATENT NO. 6,938,177

PROCEEDING NO.
IPR2023-00195

HON. CHRISTA ZADO
HON. JON M. JURGOVAN
HON. KEVIN C. TROCK

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, AUGUST 1, 2023

REFERENCE NUMBER 42653-0048IP1

REPORTED BY: TAMARA HOUSTON, CA CSR 7244, RPR, CCRR 140

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1 APPEARANCES:

2 FOR THE PETITIONER:

FISH & RICHARDSON
BY: CRAIG A. DEUTSCH, ESQ.
JEFFREY SCHNEIDMAN, ESQ.
60 South 6h Street, Suite 3200
Minneapolis, Minnesota 55402
(612) 335-5070
deutsch@fr.com

6 FOR THE PATENT OWNER:

ELLENOFF, GROSSMAN & SCHOLE LLP
BY: MICHAEL SHANAHAN, ESQ.
ANDREW COCHRAN, ESQ.
JOHN STELLABOTTE, ESQ.
1345 Avenue of the Americas
11th Floor
New York, New York 10105
(212) 370-1300
mshanahan@egsllp.com

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I N D E X

AUGUST 1, 2023

CHRONOLOGICAL AND ALPHABETICAL INDEX OF WITNESSES

NONE

EXHIBITS

NONE

1 **PROCEEDINGS VIA PHONE; TUESDAY, AUGUST 1, 2023**

2 **--000--**

3 **JUDGE ZADO:** Who's on this call for petitioner
4 today?

5 **MR. DEUTSCH:** Thank you, Your Honor. This is
6 Craig Deutsch representing Petitioner Xilinx in this
7 matter. And also on the line is Jeffrey Shneidman, also
8 with Fish & Richardson.

9 **JUDGE ZADO:** All right. And who do we have on
10 the call for patent owner today?

11 **MR. SHANAHAN:** Good afternoon, Your Honor.
12 This is Michael Shanahan for patent owner. With me, I
13 have John Stellabotte and Andrew Cochran.

14 **JUDGE ZADO:** All right. Well, we can go ahead
15 and get this call started.

16 First things first, Petitioner is the one who
17 has requested this phone call, so we're just going to go
18 ahead and start with Petitioner.

19 And why don't you just let us know what the
20 issue is and why you've asked for this call today and
21 what it is you're asking us for. And then we'll go
22 ahead and turn to patent owner.

23 Before we begin, though, I just ask that, when
24 you do begin to speak, you please just introduce
25 yourself because sometimes on these calls it's not

1 always clear to me who is speaking. And so before you
2 speak, please just introduce yourself. Thank you.

3 MR. DEUTSCH: Sure. Thank you, Your Honor.
4 This is Craig Deutsch on behalf of Petitioner.

5 We asked for this call to address a problem
6 relating to three exhibits, Exhibit 2001, 2016, and
7 2017, that were improperly filed under seal. These
8 exhibits were filed without informing Petitioner and
9 without conferring with us regarding a motion to seal or
10 a protective order, and those were filed in violation of
11 42.14 and the procedure that's set forth in the Trial
12 Practice Guide.

13 And so right now, there's no protective order
14 in place in this proceeding; there is no redacted public
15 versions of these exhibits. The exhibits themselves do
16 not have confidentiality markings, and so it's not
17 apparent what is purportedly confidential about them.

18 But while claiming the exhibits as
19 confidential, the patent owner preliminary response
20 publicly goes into detail on the public record about
21 what these exhibits purportedly contain, and these
22 exhibits -- or these descriptions in the POPR don't
23 accurately describe the contents of the exhibits.

24 And so Petitioner is left in an unfair
25 situation. We have patent owner on the public record

1 describing and characterizing these exhibits. The
2 public, however, cannot see these exhibits to know --
3 know whether these characterizations are correct. And a
4 member of the public, our client, is currently left with
5 a different impression of the exhibits than what they
6 actually state.

7 To be clear, these exhibits should be
8 irrelevant to institution and to this trial. They
9 really have no business being in the record because they
10 have nothing to do with the question of whether the
11 asserted prior art renders obvious the challenged
12 claims.

13 But at the moment, without a protective order
14 in the case, Petitioner is held -- held captive.
15 We're -- if we were operating under the default
16 protective order, for example, we'd be able to share
17 these exhibits with Petitioners, party representatives,
18 in-house counsel, our expert so that they could see the
19 contents.

20 At this point, we've now asked multiple times
21 for patent owner to fix the situation. We've asked
22 whether patent owner proposes the Board's default
23 protective order. They haven't engaged on those
24 requests, and they haven't, of course, filed a motion to
25 seal or proposed redacted exhibits or filed the standard

1 procedures for putting a protective order in place.

2 In the past, to provide --

3 JUDGE ZADO: I'm sorry --

4 MR. DEUTSCH: Yes.

5 JUDGE ZADO: I'm sorry. I mean, I think
6 that's a good summary of your position. I'd like to
7 hear, really quickly, patent owner's response to that.

8 MR. SHANAHAN: Well, yes, Your Honor. This is
9 Michael Shanahan for the patent owner, Sentient Sensors.

10 Mr. Deutsch referred to three exhibits, 2001,
11 2016, and 2017. Has the Board seen those exhibits,
12 Your Honor?

13 JUDGE ZADO: I -- I've looked at them. I'm
14 not sure why you're asking this question. Because right
15 now --

16 MR. SHANAHAN: Well, because --

17 JUDGE ZADO: Let me put it this way. There is
18 the substance of the exhibits, but right now,
19 Petitioner's point is that we have a rule in place,
20 42.14.

21 And it's clear on its face that, when you file
22 something under seal, accompanying that exhibit
23 concurrently with filing those exhibits, you are
24 obligated to file a motion for a protective order. And
25 that did not happen here.

1 And when that does not happen, as Petitioner
2 has pointed out, there is no idea from Petitioner's
3 side -- because there's also no -- no proposed
4 protective order, Petitioner doesn't know, can they even
5 show these documents to their expert? Can they show it
6 to their client? What is the basis for saying these
7 documents are confidential?

8 Because the default is documents are made
9 available to the public, and if you don't want them made
10 available to the public, you need to file a motion for a
11 protective order. And that's when you can start to
12 debate the substance of what's in those documents.

13 But right now, I don't want to get into the
14 substance. I'm trying to understand why you have not
15 filed a motion for a protective order. So could you
16 please respond to that?

17 MR. SHANAHAN: Yes, Your Honor. We have not
18 filed -- I don't have a good explanation about why we
19 didn't file a motion for a protective order.

20 These documents were, as you see in our email,
21 given a highly confidential designation when they were
22 produced in multiple litigations. We got no objection
23 from counsel for Petitioner about the designation at
24 that time. They brought up this issue about our failure
25 to file for a protective order.

1 So in response to the Rule 42 obligation, we
2 reached out to the Air Force, who is the author of these
3 documents, and asked them whether we could -- we could
4 publicly produce them or for other instructions.

5 We did that about ten days ago --

6 THE COURT: Well --

7 MR. SHANAHAN: Yes.

8 JUDGE ZADO: Well, look, I understand that
9 you're not -- it's not up to you how quickly you get a
10 response from the Air Force. But the procedure still
11 is -- because you seem to have these procedures
12 backwards.

13 The rule is that, when you want to -- when you
14 submit these or file these exhibits as confidential, you
15 file the motion for the protective order. At some later
16 time, if the Air Force no longer requires that
17 designation or does not require it, you can
18 dedesignate -- dedesignate it.

19 But this idea that, at your leisure, you
20 decide to go contact the Air Force, you wait around, you
21 don't file the motion for the protective order while
22 everybody is held captive is a problem.

23 And I heard you say that, in the past, you
24 didn't get any -- I guess you said that Petitioner, in
25 the past, in past litigations or proceedings, you have

1 designated these documents confidential. That's not
2 relevant here in the sense that this is not just
3 Petitioner here. There's the public.

4 And so you still have to file that motion with
5 us. It's not a question of whether Petitioner is going
6 to object. You have to show the Board there is good
7 cause for us to allow these documents to be protected
8 and not shown to the public, not just to Petitioner.

9 So right now, I think where we are is that,
10 without a motion for a protective order, these documents
11 are not -- you know, these don't -- the Board -- you
12 have not shown good cause. And without good cause, the
13 Board does not have to designate these documents as --
14 or allow you to designate these documents as
15 confidential.

16 And so -- I'm just going back to your email.
17 You said, if the Air Force wants to keep these documents
18 confidential, that you're willing to file a motion for a
19 protective order. And that also has been done
20 backwards. This isn't you wait to hear from somebody
21 and decide whether you're going to file a motion. This
22 motion is already over a month overdue.

23 And so right now, I think what we're dealing
24 with is whether or not -- now, I'm going to go ahead and
25 turn to Petitioner now.

1 New question. If patent owner -- well, first
2 of all, do you even object at this point -- given how
3 late it is, do you even object at this point to patent
4 owner being allowed to file a motion for a protective
5 order?

6 MR. SHANAHAN: No, I don't -- I don't think
7 so, Your Honor. And I also think that a motion is not
8 necessary. I think we're happy to go ahead and file
9 the -- on our behalf to file the motion for the
10 protective order because we are not trying to obstruct
11 public access to these documents. That's not our
12 intent.

13 To the extent we need to file -- if I
14 misunderstand the rules -- some type of redacted copy --

15 JUDGE ZADO: I'm sorry -- I'm sorry. Who is
16 speaking? I just posed a question to Petitioner, but it
17 sounds like this is counsel for patent owner.

18 MR. SHANAHAN: Oh, I'm sorry, Your Honor. I
19 thought you were asking me if I opposed. Yes, that's
20 right, Your Honor. It's Michael Shanahan. I'll be
21 quiet now.

22 JUDGE ZADO: Sorry, Mr. Shanahan. I was
23 asking Petitioner's counsel.

24 At this stage, if we were -- because this is
25 so late, this filing of this motion to seal or motion

1 for a protective order -- this question is for
2 Petitioner's counsel.

3 At this stage, if we were to allow it and give
4 patent owner leave to file this motion, would you be
5 opposed to their filing it now at this late stage?

6 MR. DEUTSCH: Thank you, Your Honor --

7 JUDGE ZADO: I'm not asking whether -- I'm not
8 asking whether -- just to be clear -- sorry -- I'm not
9 asking whether you would oppose the motion because
10 obviously, until you see the content of the motion, you
11 don't know whether you would oppose the motion.

12 My question is: Are you opposed to them even
13 being allowed to file the motion at this stage?

14 MR. DEUTSCH: Right. Understood.

15 So on this issue, you know, this is something
16 we've been trying to get patent owner -- patent owner's
17 attention for some time. And only now is there some
18 movement.

19 And the issue, as you've noted, there is, at
20 this point, public -- public characterization and
21 discussion in the POPR around these exhibits. And so it
22 seems like the -- that, at this point, the cleanest path
23 is to expunge that discussion from the POPR.

24 Again, it's -- you know, I don't want to get
25 into the merits on this call, but it amounts to

1 something that's largely irrelevant and a distraction to
2 the institution decision that's coming up.

3 So that -- that's, I think, the -- at this
4 point what makes the most sense given the timing and
5 what's been discussed.

6 JUDGE ZADO: Okay. Well, if you both are --
7 if the parties can just please bear with us, we're going
8 to be on mute for a moment while my colleagues and I
9 confer.

10 (Pause off the record: 10:24 a.m. to
11 10:28 a.m.)

12 JUDGE ZADO: Okay, everyone. This is
13 Judge Zado. We're back.

14 So my colleagues and I have conferred, and
15 this is what we're going to do:

16 We're going to go ahead and issue an order
17 shortly ordering patent owner to file a motion to seal.
18 It's going to have a briefing schedule. And if patent
19 owner does not file the motion to seal, then we will
20 expunge the documents from the record.

21 Also, it wasn't clear when we started this
22 call who had asked for the reporter to be on the line.
23 Was that patent owner, or was that Petitioner?

24 MR. DEUTSCH: That was Petitioner.

25 JUDGE ZADO: Okay. Well, we -- we would just

1 ask that the reporter enter the transcript into the
2 record after this -- at some point after this call.

3 MR. DEUTSCH: No problem. We can do that.

4 JUDGE ZADO: Okay. Great.

5 Are there any further questions?

6 MR. SHANAHAN: Your Honor, this is Michael
7 Shanahan for patent owner.

8 I don't have a further question, but while we
9 were on this call, I got a call from Air Force counsel
10 who, I guess, has left me a message. So there may be
11 some update there since we have their response.

12 Does that -- does the Board want to hear
13 anything more about that depending upon what they say?

14 JUDGE ZADO: I think that can all be in the
15 motion for a protective order. Just so that you're
16 aware, though, the schedule, though, once the order
17 issues, the -- patent owner, you'll have one week to
18 file the motion for the protective order.

19 And then, Petitioner, you'll have one week to
20 respond.

21 So whatever that response is, if you deem it
22 relevant, that can just be part of the -- your motion.

23 MR. DEUTSCH: Very well.

24 JUDGE ZADO: All right. So are there any
25 other questions?

1 MR. SHANAHAN: Not from patent owner.

2 JUDGE ZADO: Petitioner, Counsel for
3 petitioner.

4 MR. DEUTSCH: Thank you, Your Honor. Nothing
5 further from Petitioner.

6 JUDGE ZADO: Before we -- we adjourn, though,
7 I do -- I just do want to remind the parties that, when
8 you appear before the Board, you are responsible for
9 being familiar with our rules of practice, and you are
10 responsible for abiding by them.

11 So when we have rules like filing a motion for
12 a protective order, these are not things that you just
13 can neglect or ignore and sort of work around or come up
14 with your own rules or ways of proceeding.

15 It's really important, not just for the
16 efficiency of these proceedings, but for fairness to the
17 parties and to the public, that you just be mindful of
18 these rules and abide by these rules moving forward in
19 this case.

20 So with that, is there anything from Judges
21 Trock, Jurgovan, before we adjourn?

22 All right. Well, thank you, everyone. And
23 we'll go ahead and adjourn. Thank you.

24 (Whereupon the proceedings concluded at
25 10:32 a.m.)

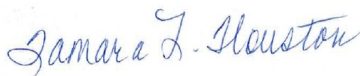
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	)	
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	)	U.S. PATENT NO. 6,938,177
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	)	PROCEEDING NO.
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XILINX,	)	
	)	HON. CHRISTA ZADO
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V.	)	HON. KEVIN C. TROCK
	)	
SENTIENT SENSORS, LLC	)	
	)	
PATENT OWNER.	)	
_____	)	

I, TAMARA HOUSTON, PRO TEM REPORTER, DO HEREBY
CERTIFY THAT I DID CORRECTLY REPORT THE PROCEEDINGS
CONTAINED HEREIN AND THAT THE FOREGOING PAGES 1 THROUGH
16, INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT
TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE
MATTER OF THE ABOVE-ENTITLED CAUSE ON TUESDAY, AUGUST 1,
2023.

Dated this 8th day of August, 2023



TAMARA HOUSTON, CSR NO. 7244
PRO TEM REPORTER

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