UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD. AND
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

MANUFACTURING RESOURCES INTERNATIONAL, INC.
Patent Owner

Case No. IPR2023-00221
U.S. Patent No. 11,013,142 B2

RENEWED JOINT MOTION FOR ENTRY OF A PROTECTIVE ORDER PURSUANT TO 37 C.F.R. § 42.54

Pursuant to 37 C.F.R. § 42.54, Petitioners Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. ("Petitioner") and Patent Owner Manufacturing Resources International, Inc. ("Patent Owner") (collectively, the "Parties") hereby jointly move for entry of the Stipulated Protective Order appended as Appendix A.

After institution of this proceeding, Patent Owner and Petitioner agreed to "additional discovery" pursuant to 37 C.F.R. § 42.51(b)(2)(i). Specifically, Patent Owner and Petitioner each agreed to produce in this proceeding certain confidential documents and testimony that were produced previously in co-pending ITC Investigation No. 337-TA-1331 concerning the patent at issue. These materials are subject to a protective order (the "ITC Protective Order") entered by the ALJ presiding over the co-pending investigation and are designated as "Confidential Business Information Subject to Protective Order" under the terms of the ITC Protective Order.

To maintain confidentiality of the materials exchanged under the ITC Protective Order, the parties conferred and agreed upon entry of a stipulated protective order. The parties filed a Joint Motion for Entry of a Protective Order on September 11, 2023. Paper 15. The Motion attached as appendices the originally agreed to Stipulated Protective Order and a redlined version of the Board's default protective order showing where the parties had made changes based on their agreement. *See id.* at Appendix A (Stipulated Protective Order), Appendix B (Red-

lined Stipulated Protective Order).

The Board issued an Order denying entry of the original Stipulated Protective Order on December 11, 2023. Paper 25. The Board identified two proposed modifications underlying its decision to deny the Joint Motion for a Protective Order. *Id.* at 4-5.

First, in Paragraph 3, the original Stipulated Protective Order stated that confidential information shall be extended to employees/consultants of a party "only upon agreement of the parties." Paper 25 at 4. The Board's default protective order also provides an option to extend confidential information by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person. *Id.* Upon review of the Board's Order, the Parties have agreed to reinstate this option. The following language, which was eliminated in the original Stipulated Protective Order, has been returned: "or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person." The updated Stipulated Protective Order attached as Appendix A has been modified to reflect this retention of the Board's default protective order language.

Second, in Paragraph 5, the original Stipulated Protective Order eliminated the language "A party may challenge the confidentiality of the information by opposing the Motion to Seal." *Id.* Upon review of the Board's Order, the Parties have agreed to retain the language. The updated Stipulated Protective Order attached

as Appendix A has been modified to reflect this retention of the Board's default protective order language.

The updated Stipulated Protective Order is appended as Appendix A. The Stipulated Protective Order retains the modifications to the Board's default protective order that the Board did not identify as problematic. A redlined version showing the changes from the Board's default protective order is again appended as Appendix B. These modifications were originally explained in the October Joint Motion for Entry of a Protective Order. To eliminate the need to refer back to that motion, those reasons are again set forth in further detail as follows.

A. Marking of confidential information

The Board's default protective order provides that confidential information shall be marked as "PROTECTIVE ORDER MATERIAL." The parties have modified the default protective order to provide that confidential information shall instead be marked as "CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER." This modification conforms the confidentiality marking under the Stipulated Protective Order with the confidentiality marking provided for under the ITC Protective Order.

B. Limits on persons to whom material may be disclosed

The parties have modified the list of individuals who are permitted access to confidential information under Section 2 of the Board's default protective order.

Specifically, the parties have modified the list to prohibit in-house counsel or other employees of parties to the proceeding from accessing confidential information. The parties submit that provisions prohibiting in-house counsel or other employees of parties to access the opposing party's confidential information are necessary in this proceeding. The parties to this proceeding are competitors. Confidential documents may include competitively sensitive business information. Providing in-house counsel or other employees of a competitor access to confidential materials would cause competitive harm to the producing party.

These changes do not affect access to confidential information for employees and representatives of the Patent and Trademark Office who have a need for access to the confidential information.

C. Application of limits only to confidential information marked "CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER"

The parties also have modified the first sentence of Section 2 of the Board's default protective order to expressly clarify that the limits in the Board's protective order apply only to confidential information that is marked "CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER" in accordance with the protective orders in this proceeding and the co-pending ITC investigation.

D. Agreement not to challenge confidentiality designations

The parties have returned the provisions of Sections 3 and 5(A)(i) permitting challenges to the confidentiality of the designated materials in the Board's default protective order as requested by the Board. However, as previously noted, the materials subject to the updated Stipulated Protective Order in this proceeding remain subject to strict prohibitions on disclosure under the ITC Protective Order.

The parties respectfully submit that good cause exists for entry of the updated Stipulated Protective Order and respectfully request that the Board enter the updated Stipulated Protective Order with the modifications identified herein.

II. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Board grant this unopposed motion for entry of a protective order.

Dated: December 27, 2023

Respectfully submitted,

/ Sanjeet K. Dutta /
Sanjeet K. Dutta
Reg. No. 46,145
Goodwin Procter LLP
601 Marshall Street
Redwood City, CA 94063
sdutta@goodwinlaw.com
Tel: (650) 752-3100
Fax: (650) 853-1038

Counsel for Petitioner

/ John C. Alemanni /
John C. Alemanni
Reg. No. 47,384
Kilpatrick Townsend & Stockton LLP
4208 Six Forks Road, Suite 1400
Raleigh, NC 27609
jalemanni@kilpatricktownsend.com
Tel: (919) 420-1724
Fax: (919) 420-1800

Counsel for Patent Owner

APPENDIX A

Stipulated Protective Order

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

1. Confidential information shall be clearly marked "CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER."

2. Access to confidential information marked "CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER" is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Party Representatives. Representatives of record for a party in the proceeding.

(B) 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.

(C) 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.

(D) The Office. Employees and representatives of the 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)-(C), 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 Acknowledgement. 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 Filed 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 nonconfidential 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. The nonconfidential 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. Information designated as confidential that is disclosed to another party during discovery or

other proceedings before the Board shall be clearly marked as "CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER" 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.

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Patent Owner

Case Nos.:
IPR2023-00199
IPR2023-00220
IPR2023-00221
IPR2023-00254
IPR2023-00255

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]

APPENDIX B

Stipulated Protective Order

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

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~~(A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.~~

(A~~B~~) Party Representatives. Representatives of record for a party in the proceeding.

(B~~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 of a party.~~

(C~~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.

(D~~F~~) The Office. Employees and representatives of the 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 ~~(d)~~(2)(A)-(C~~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 Acknowledgement. The party opposing disclosure to that person shall have the

burden of proving that such person should be restricted from access to confidential information.

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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.

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~~[CAPTION]~~

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[Signature]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date below a copy of this **JOINT MOTION FOR ENTRY OF A PROTECTIVE ORDER PURSUANT TO 37 C.F.R. § 42.54** was served on Petitioner by filing through the P-TACTS System and by electronic delivery via email to the following:

Sanjeet Dutta – sdutta@goodwinlaw.com
Douglas J. Kline – dkline@goodwinlaw.com
Srikanth Reedy – sreddy@goodwinlaw.com
Naomi L. Birbach – nbirbach@goodwinlaw.com

Dated: December 27, 2023

/ John C. Alemanni /
John C. Alemanni
Reg. No. 47,384
Counsel for Patent Owner