

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC. and GOOGLE LLC
Petitioners

v.

SPACETIME3D, INC.
Patent Owner

Case IPR2023-00344¹
Patent No. 9,696,868 B2

UNOPPOSED MOTION FOR ENTRY OF PROTECTIVE ORDER

¹ Google LLC, which filed a petition in IPR2023-00578, has been joined as a petitioner in this proceeding.

Patent Owner moves for entry of the Modified Protective Order attached hereto as Attachment A.² Petitioner, having reviewed the proposed Modified Protective Order, does not oppose it. Good cause exists for granting this motion and entering the Modified Protective Order, including protecting highly confidential information that may be subject to privilege and/or the work-product doctrine.

A party seeking to protect confidential information may seek entry of a protective order in a proceeding before the Board. *See, e.g., Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34 (PTAB Mar 14, 2013). Upon a showing of “good cause,” the Board may enter a protective order to protect from public disclosure such confidential information as disclosed by a party during the course of a proceeding before the Board. *See* 37 CFR § 42.54. Additionally, parties “may agree to modify the Default Protective Order to provide additional tiers or categories of confidential information, such as ‘Attorneys’ Eyes Only.’” *See* Consolidated Trial Practice Guide (Nov. 2019) at 115-16. The parties submit that good cause exists here to enter the Modified Protective Order, which includes an additional category of confidential information, “HIGHLY CONFIDENTIAL –

² A redline comparison of the Modified Protective Order to the Board’s Default Protective Order is attached hereto as Attachment B.

OUTSIDE COUNSEL EYES' ONLY.” This additional category is necessary to protect highly confidential information constituting settlement agreements regarding the '048 Patent. These agreements have been designated as Confidential Outside Attorneys' Eyes Only by the parties to those agreements.

Petitioner does not oppose this motion, and will execute the acknowledgment appended to the Modified Protective Order. Petitioner has also agreed that the aforementioned settlement agreements that are designated “CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES' ONLY” will be treated as Highly Confidential information under the Modified Protective Order, even if the Board does not enter the Modified Protective Order.

For the reasons provided above, the parties jointly move for entry of the Modified Protective Order attached as Attachment A.

DATED: October 19, 2023

Respectfully submitted,

/s/Kenneth Wayne Darby, Jr.
W. Karl Renner, Reg. No. 41,265
Andrew B. Patrick, Reg. No. 63,471
Kenneth Wayne Darby, Jr., Reg.
65,068
Usman A. Khan, Reg. No. 70,439
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60 South Sixth St., Suite 3200
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*Attorneys for Petitioner
Apple Inc.*

Respectfully submitted,

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*Attorneys for Patent Owner
SpaceTime3D, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2023, I caused a true and correct copy of the foregoing Joint Motion for Entry of Protective Order to be served via email on the Patent Owner at the following addresses:

Fish & Richardson P.C.
60 South Sixth St., Suite 3200
Minneapolis, MN 55402

W. Karl Renner, Reg. No. 41,265
Andrew B. Patrick, Reg. No. 63,471
Kenneth Wayne Darby, Jr., Reg. No. 65,068
Usman A. Khan, Reg. No. 70,439
Email: IPR50095-0110IP1@fr.com.;

Erika Arner, Reg. No. 57,540
Cory Bell, Reg. No. 75,096
Yanyi Liu, Reg. No. 71,046
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Respectfully submitted,

/s/Todd E. Fitzsimmons
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Tel: (571) 210-8000
todd@fitziplaw.com

Attachment A

UNITED STATES PATENT AND TRADEMARK OFFICE

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Patent Owner

Case IPR2023-00344³
Patent No. 9,696,868 B2

Before HUBERT C. LORIN, DAVID C. McKONE, and
SHEILA F. McSHANE, *Administrative Patent Judges*.

Before KALYAN K. DESHPANDE, *Acting Deputy Chief Administrative
Patent Judge*.

MODIFIED PROTECTIVE ORDER

³ Google LLC, which filed a petition in IPR2023-00578, has been joined as a petitioner in this proceeding.

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

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY.”

2. Access to confidential information designated “PROTECTIVE ORDER MATERIAL” 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) Outside Counsel. Outside counsel 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 of 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. The term “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY” means “CONFIDENTIAL INFORMATION,” including any settlement agreements between parties in related litigation(s) involving the challenged patent that may implicate information that is privilege and/or immune from disclosure to other parties as a result of the attorney-client privilege, the qualified immunity conferred by the attorney work-product doctrine, the joint defense privilege, the common interest privilege, the community of interest doctrine, and other applicable privileges, immunities or protections.

5. Access to confidential information designated “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY” is limited to the individuals defined in paragraph 2(B) who have executed the acknowledgment appended to this order, and to the individuals defined in paragraphs 2(E) and 2(F). For confidential information designated “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY,” paragraph 2(E) shall be limited to the support personnel of the individuals defined in paragraphs 2(B) and 2(F).

6. 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.

7. 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 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” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY” (“DESIGNATED MATERIAL”) and shall be produced in a manner that maintains its confidentiality.

8. 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

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⁴ Google LLC, which filed a petition in IPR2023-00578, has been joined as a petitioner in this proceeding.

**STANDARD ACKNOWLEDGMENT
FOR ACCESS TO PROTECTIVE ORDER MATERIAL OR OUTSIDE
ATTORNEYS' EYES ONLY INFORMATION**

I _____, affirm that I have read the Modified 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 Modified Protective Order; that I am personally responsible for the requirements of the terms of the Modified 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 Modified Protective Order and providing remedies for its breach.

Signature: _____

Attachment B

~~DEFAULT~~ UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Patent Owner

Case IPR2023-00344¹
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Before HUBERT C. LORIN, DAVID C. McKONE, and
SHEILA F. McSHANE, Administrative Patent Judges.

Before KALYAN K. DESHPANDE, Acting Deputy Chief Administrative
Patent Judge.

MODIFIED PROTECTIVE ORDER

~~The following Default Protective Order will govern the filing and treatment of~~

¹ Google LLC, which filed a petition in IPR2023-00578, has been joined as a
petitioner in this proceeding.

Trial@uspto.gov
[Tel: 571-272-7822](tel:571-272-7822)

[Paper](#)
[Entered:](#)

~~confidential information in the proceeding:~~

Default Protective Order

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

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY.”

2. Access to confidential information designated “PROTECTIVE ORDER MATERIAL” 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~~ Outside Counsel. Outside counsel 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 of a party.

~~(E)~~ Support Personnel. Administrative assistants, clerical staff, court reporters and

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(E) 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.

(E) ~~(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.~~ 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)–(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. The term “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY” means “CONFIDENTIAL INFORMATION,” including any settlement agreements between parties in related litigation(s) involving the challenged patent that may implicate information that is privilege and/or immune from disclosure to other parties as a result of the attorney-client privilege, the qualified immunity conferred by the attorney work-product doctrine, the joint defense privilege, the common interest privilege, the community of interest doctrine, and other applicable privileges, immunities or protections.

5. Access to confidential information designated “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY” is limited to the individuals defined in paragraph 2(B) who have executed the acknowledgment appended to this order, and to the individuals defined in paragraphs 2(E) and 2(F). For confidential information designated “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY,” paragraph 2(E) shall be limited to the support personnel of the individuals defined in paragraphs 2(B) and 2(F).

~~4.~~6. 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~~
information received that is designated as confidential; and
- ~~(D)~~ (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.

~~5.7.~~ 5.7. 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

(i) 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” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY” (“DESIGNATED MATERIAL”) and shall be produced in a manner that maintains its confidentiality.

~~6.8.~~ 8. 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.

~~(k) Standard Acknowledgement of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:~~

~~[CAPTION]~~

~~**Standard Acknowledgment for Access to Protective Order Material**~~

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STANDARD ACKNOWLEDGMENT
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I _____, affirm that I have read the Modified 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 Modified Protective Order; that I am personally responsible for the requirements of the terms of the Modified 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 Modified Protective Order and providing remedies for its breach.

Protective Order and providing remedies for its breach.
f

Signature]:_____