UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC

Petitioner

v.

DDC TECHNOLOGY, LLC,

Patent Owner

U.S. Patent No. 9,420,075

Case No.: IPR2023-00707

PETITIONER'S MOTION TO SEAL

Pursuant to the Board's January 23, 2024 order, Petitioner Google hereby moves to seal Exhibit 2034. See Exhibit 3009. This document contains confidential information pertaining to business and technical discussions with Patent Owner, which Petitioner would like to remain confidential.

I. Statement of Facts

- On March 4, 2023, as part of the corresponding district court litigation in NDTX, Patent Owner designated Exhibit 2034 as confidential and produced it to Petitioner, thus subjecting the exhibit to a protective order at the district court. See Exhibit 2034.
- On July 28, 2023, Patent Owner filed a motion to seal Exhibit 2034 as well as other documents. See Paper 13.
- On October 26, 2023, the Board ordered the parties to file a supplemental motion to seal for Exhibit 2034. See Paper 29. The Board noted that although the parties "designated this document as confidential during district court litigations, neither party provides any justification of that designation or explanation for why the document is confidential." *Id.*, at 4. Additionally, the Board, while citing to various sections of Patent Owner's Preliminary Response in which the exhibit is quoted, noted that "Patent Owner has not filed

a proposed redacted version of this exhibit, despite the fact that it appears to include at least some public information." *Id.*

- On November 9, 2023, Patent Owner filed a supplemental motion to seal in which it took the position that Exhibit 2034 was not confidential and in which Petitioner provided a rationale for why the document is confidential. See Paper 37. At that time, a public, redacted version of Exhibit 2034 prepared by Petitioner was filed. See Exhibit 2034, public version.
- On December 19, 2023, the Board issued an order (1) stating that the supplemental motion to seal was unacceptable, noting the disagreement between the parties as to the confidentiality of the exhibit, (2) ordering the parties to meet and confer to discuss whether the exhibit contains confidential information, to negotiate a proposed redacted version of the exhibit, and to discuss an appropriate modification to the protective order to avoid similar problems in the future, and (3) ordering the parties to email the Board by January 8, 2024 to, in part, briefly summarize any agreement reached. See Exhibit 3009, pp. 2-3.
- On January 8, 2024, Petitioner emailed the Board, stating that the parties were unable to agree on the confidentiality of the exhibit.

Exhibit 3009, pp. 1-2. Petitioner's position was that portions of the exhibit were confidential, while Patent Owner's position was that the exhibit was not confidential. *Id.*, at 1. Petitioner included proposed modifications to the protective order, which both parties had agreed to, as well as proposed redactions to the exhibit, which mirrored those in the already filed public version of Exhibit 2034. See M. Kiklis email to Trials@USPTO.gov, January 8, 2024, 5:08 pm. The email also stated Patent Owner's position that, should Google file a motion to seal, "while Google's proposed redactions do not meet the standard for being sealed, Patent Owner does not intend to file an opposition brief." Exhibit 3009, pp. 1-2. Petitioner therefore requested authorization to file a motion to seal Exhibit 2034. *Id.*, at 2.

- On January 23, 2024, the Board authorized Petitioner to file this motion to seal and request that the Board enter the modified protective order. See Exhibit 3009, p. 1.

II. Non-Confidential Version of Exhibit 2034

Patent Owner has already filed a nonconfidential version of Exhibit 2034 that was prepared by Petitioner. See Exhibit 2034, public version.

III. Protective Order

Pursuant to the Board's order (Exhibit 3009), Petitioner includes a redline version of the modified protective order at Exhibit 1 to this motion that both parties agreed to and includes a clean version of that modified protective order signed by both parties at Exhibit 2 to this motion. This version of the protective order shifts the burden of filing a motion to seal on the party designating the information as confidential. See § 6(A)(iii). This modification will not necessarily prevent the instant situation from occurring again, since it was Patent Owner that originally designated the information as confidential and then changed its mind. This version of the protective order therefore has a requirement that the parties must meet and confer should either party decide that information already designated as confidential is no longer confidential. See § 6(A)(iv). The parties respectfully request that the Board enter this version of the protective order.

IV. Good Cause Exists for Sealing Exhibit 2034

In deciding whether to seal documents, the Board must find "good cause," and must "strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." *Garmin v. Cuozzo*, IPR2012-00001, Paper 36 (April 5, 2013).

Here, the balance tips in favor of protecting this confidential information. Exhibit 2034 reflects non-public business and technological discussions between

Petitioner and Patent Owner. As an initial matter, all quotes from the exhibit that are in the public version of Patent Owner's Preliminary Response are unredacted. See Exhibit 2034, public version. Thus, the public can see the information that Patent Owner relies upon for its secondary consideration argument. Petitioner only redacts the business discussions, technological discussions, and email addresses of its employees, because none of this information relates to patentability. As such, the public should have no interest in seeing this information.

Petitioner would like the business and technical discussions in Exhibit 2034 to remain confidential because that information shows the manner in which Google conducted business discussions with Patent Owner, which is not public, and shows the manner in which Google performed its technological, decision-making process, which is also not public. How Google conducts its business behind closed doors should be of no interest to the public looking at these proceedings to understand patentability issues. Also, Petitioner would like to keep the email addresses of its employees confidential to prevent those employees from receiving unwanted email communications. Because none of this information relates to patentability, Petitioner requests that it remain confidential.

V. Certification of Non-Publication

The information sought to be sealed has not been published or otherwise made public.

Respectfully Submitted,

Dated: January 30, 2024

Michael L. Kiklis____

Michael L. Kiklis
Reg. No. 38,939
Attorney for Petitioner
Google LLC

CERTIFICATE OF SERVICE

The undersigned certifies service pursuant to 37 C.F.R. §§ 42.6(e) of PETITIONER'S MOTION TO SEAL by filing this document through the USPTO Patent Trial and Appeal Case Tracking System and by emailing a copy to the following email addresses:

cortneyalexander@kentrisley.com
haller@haller-iplaw.com

Respectfully Submitted,

Dated: January 30, 2024

Michael L. Kiklis_____

Michael L. Kiklis
Reg. No. 38,939
Attorney for Petitioner
Google LLC

EXHIBIT 1

REDLINED VERSION OF MODIFIED

PROTECTIVE ORDER

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

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v.

DDC TECHNOLOGY, LLC,

Patent Owner.

IPR2023-00707

U.S. Patent 9,420,075

PROTECTIVE ORDER

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 - PROTECTIVE ORDER MATERIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY."

2. Access to Confidential Information designated "CONFIDENTIAL - 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 and outside counsel of record in *DDC Technology, LLC v. Google LLC*, Case No. 23-cv-01160-VC (N.D. Cal.).

(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. Such support personnel 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. Access to confidential information designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Outside Counsel. Outside counsel of record for a party in the proceeding and outside counsel of record in *DDC Technology, LLC v. Google LLC*, Case No. 23-cv-01160-VC (N.D. Cal.). All in-house counsel and other representatives of the parties (other than outside counsel of record) shall not

be allowed to view HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY Information.

(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.

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4. 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.

5. Protection of Confidential Information. 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 to conduct the proceeding and maintaining a record of the locations of such copies, which similarly must be kept secure.

6. Treatment of Confidential Information. 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

publicly available. 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.

(iii) When the Confidential Information is to be filed with the Board by a party ("filing party") and the opposing party designated the information as confidential ("designating party"), the parties shall perform the following: (1) the filing party shall, to the extent practicable, provide the designating party with 7 days advance notice of its intention to file the Confidential Information and specifically identify such Confidential Information; (2) where confidentiality is alleged as to some but not all of the information submitted to the Board, the designating party shall send a non-confidential version of the Confidential Information to the filing party 2 days before the filing party intends to file the Confidential Information with the Board; (3) the filing party shall identify the exhibit numbers to be used for the Confidential Information no later than 4 pm Eastern on the day ~~1 day~~ before the filing party intends to file the Confidential Information, and (4~~3~~) the designating party shall draft

and file a Motion to Seal for the Confidential Information on the date the filing party intends to file the Confidential Information consistent with § 6(A)(i) above.~~provide, for inclusion in the filing party's motion to seal, a non-confidential description of the nature of the confidential information to be filed under seal, and an explanation of the reasons why the information is confidential and should not be made available to the public, 1 day before the filing party intends to file the Confidential Information with the Board.~~

(iv) The parties shall meet and confer as soon as practicable after either party decides that information designated as Confidential Information is no longer confidential.

(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 "CONFIDENTIAL - PROTECTIVE ORDER MATERIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and shall be produced in a manner that maintains its confidentiality.

7. Production of Privileged or Otherwise Protected Material. When a party gives notice that certain produced material is subject to a claim of privilege or other protection, that party may notify the party that received the information of the claim

and the basis for it. After being notified, the receiving party must promptly return or destroy the specified information and any copies it has and may not sequester, use or disclose the information. In addition, information that contains privileged matter or attorney work product shall be immediately returned if such information appears on its face to have been inadvertently produced. Any disclosure of communications, information, or documents covered by the attorney-client privilege or work product protection is not a waiver of the privilege or protection. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). Accordingly, the provisions of Federal Rule of Evidence 502(b) do not apply, and the disclosing party is not required to satisfy the elements of Rule 502(b) to properly assert the attorney-client privilege or work product protection over disclosed communications, information, and documents.

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.

9. Standard Acknowledgement of Protective Order. The form attached as Appendix A may be used to acknowledge a protective order and gain access to information covered by the protective order.

Agreed upon by the parties.

Respectfully submitted,

Google LLC
Petitioner

By _____
Michael L. Kiklis
Reg. No. 38,939
Michael@kiklisclark.com

Kiklis and Clark, PLLC
1800 Diagonal Rd.
Suite 600, PMB 1093
Alexandria, VA 22314
Phone: 800-966-7832
Mobile: 202-262-5741

Dated: _____

DDC Technology, LLC
Patent Owner

By _____
Matthew C. Holohan
Reg. No. 73,288
mholohan@sheridanross.com

Sheridan Ross P.C.
1560 Broadway
Suite 1200
Denver, CO 80202-5141
Phone: 303-863-9700

Dated: _____

APPENDIX A

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

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Patent Owner.

IPR2023-00707

U.S. Patent 9,420,075

Standard Acknowledgment for Access to Protective Order Material

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.

SIGNED this _____ day of _____ 202_ at _____.

_____

[Signature]

_____

[print name]

EXHIBIT 2

CLEAN VERSION OF MODIFIED PROTECTIVE ORDER SIGNED BY BOTH PARTIES

UNITED STATES PATENT AND TRADEMARK OFFICE

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information, or documents covered by the attorney-client privilege or work product protection is not a waiver of the privilege or protection. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). Accordingly, the provisions of Federal Rule of Evidence 502(b) do not apply, and the disclosing party is not required to satisfy the elements of Rule 502(b) to properly assert the attorney-client privilege or work product protection over disclosed communications, information, and documents.

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Respectfully submitted,

Google LLC
Petitioner

By Michael L. Kiklis
Michael L. Kiklis
Reg. No. 38,939
Michael@kiklisclark.com

Kiklis and Clark, PLLC
1800 Diagonal Rd.
Suite 600, PMB 1093
Alexandria, VA 22314
Phone: 800-966-7832
Mobile: 202-262-5741

Dated: 1/30/24

DDC Technology, LLC
Patent Owner

By Cortney S. Alexander
Cortney S. Alexander
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5755 N Point Pkwy, Ste 57
Alpharetta, GA 30022
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Fax: (770) 462-3299

Dated: 1/30/24

APPENDIX A

UNITED STATES PATENT AND TRADEMARK OFFICE

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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.

SIGNED this _____ day of _____ 202_ at _____.

_____

[Signature]

_____

[print name]