

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MIANYANG BOE OPTOELECTRONICS TECHNOLOGY CO., LTD.;
WUHAN CHINA STAR OPTOELECTRONICS SEMICONDUCTOR DISPLAY
TECHNOLOGY CO., LTD.; TIANMA MICROELECTRONICS CO., LTD.;
AND VISIONOX TECHNOLOGY, INC.,
Petitioner,

v.

SAMSUNG DISPLAY CO., LTD.
Patent Owner.

Case IPR2023-00941
U.S. Patent No. 7,414,599

**PATENT OWNER'S UNOPPOSED MOTION TO SEAL
AND FOR ENTRY OF PROTECTIVE ORDER**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54(a), Patent Owner Samsung Display Co., Ltd. (“Samsung Display”) respectfully moves to seal its Patent Owner Response and supporting Exhibits 2008, 2018, 2019, and 2046, all of which are being filed concurrently with this motion. Samsung Display also respectfully requests that the Board enter the proposed protective order (“Proposed PO”) submitted herewith as Appendix A. A redline version showing differences between the Proposed PO and the Board’s Default Protective Order set forth in the Consolidated Trial Practice Guide is submitted as Appendix B. The parties have conferred and Petitioner has advised that it does not oppose this motion.

I. Motion to Seal

Pursuant to the provisions of the Proposed PO, Patent Owner respectfully requests that the Board seal the following exhibits and papers for the reasons set forth below: Patent Owner Response and Exhibits 2008, 2018, 2019, and 2046.

When enacting *inter partes* reviews, 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). Additionally, 37 C.F.R. § 42.14 provides that:

The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal

concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

Accordingly, “[a] party intending a document or thing to be sealed may file a motion to seal concurrent with the filing of the document or thing,” and “[t]he document or thing will be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.” Consolidated Office Trial Practice Guide (November 2019) (“TPG”) at 19.

The standard for granting a motion to seal is good cause. 37 C.F.R. § 42.54(a). In *Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR 2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative), the Board explained the good cause 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. These factors support granting Samsung Display’s motion to seal.

First, the information sought to be sealed is “truly confidential.” Samsung Display has not publicly disclosed the information it requests to be sealed. Moreover, the information concerns Samsung Display’s technologies that are subject to

restrictions under South Korea’s Act on Prevention of Divulgence and Protection of Industrial Technology (the “Industrial Technology Protection Act” or “ITA”) as “National Core Technology” (“NCT”). In addition, the same information was designated as confidential “NCT Information” under the protective order in parallel litigation between Samsung Display and Petitioner Mianyang BOE at the U.S. International Trade Commission (Inv. No. 337-TA-1351).

Second, “concrete harm” to Samsung Display would result if the documents were accessible to Petitioner or the public. Broad unprotected disclosure of this information would provide the public at-large with direct insight into Samsung Display’s closely held technological advancements and strategies. Such access would severely hinder Samsung Display’s ability to compete in the market. Confidential information such as this is precisely the type of information to be protected pursuant to 37 C.F.R. § 42.54(a)(7).

Third, Samsung Display has a “genuine need” to rely on the documents in this proceeding. Samsung Display relies on the documents, among other evidence, to argue objective indicia of non-obviousness, which “must be considered . . . where present.” *Apple Inc. v. Samsung Elec. Co., Ltd.*, 839 F.3d 1034, 1048 (Fed. Cir. 2016) (en banc). The technical information relied upon is not available from any non-confidential sources and is highly relevant to Samsung Display’s position that the challenged claims are not unpatentable.

Fourth, the prejudicial effect that disclosure would have on Samsung Display far outweighs the public's interest in accessing this information for the purposes of the patentability of the challenged claims in this proceeding. Samsung Display has a strong interest in protecting its intellectual property by asserting objective indicia of nonobviousness. Moreover, Samsung Display will submit a redacted version of its Patent Owner's Response and Exhibits 2008, 2018, and 2046, which appropriately balances the public's interest in having an open record with Samsung Display's interest in protecting its confidential information.¹

Accordingly, pursuant to the provisions of the Proposed PO, Samsung Display respectfully requests the following technical documents be sealed:

1. Exhibit 2008 is the Declaration of Samsung Display's technical expert, Dr. Andrew Wolfe. Certain paragraphs of the declaration reflect Samsung Display's confidential technical information concerning its products, including information that is subject to South Korea's ITA law.
2. Exhibit 2018 is a claim chart demonstrating how a certain Samsung Display product practices U.S. Patent No. 7,414,599 (the "'599 Patent").

¹ Exhibit 2019 is a highly sensitive internal Samsung Display technical document that is subject to South Korea's ITA law and cannot be partially redacted.

It contains excerpts of Samsung Display technical documentation (Exhibit 2019) that, as explained above, is confidential.

3. Exhibit 2019 is a Samsung Display technical document that contains detailed technical information including structure, components used, dimensions, testing information, and functionality. It is marked with internal corporate confidentiality designations, and it includes information that is subject to South Korea's ITA law.
4. Exhibit 2046 is the Declaration of Kwangsae Lee. This document describes Samsung Display technical documentation (Exhibit 2019) that, as explained above, is confidential.

II. Request for Entry of Protective Order

“A party may file a motion to seal where the motion contains a proposed protective order.” TPG at 19. While “[t]he Board encourages the parties to adopt the Board’s default protective order,” parties may “choose to propose a protective order deviating from the default protective order.” *Id.* at 91. If a motion for a protective order is filed, “[t]he document or thing will be protected on receipt of the motion and remain so, pending the outcome of the decision on the motion.” *Id.* at 19–20. “When a proceeding before the Board involves the same parties and subject matter as a parallel district court proceeding, parties may propose that a protective order entered by the district court be adopted by the Board.” *Id.* at 116.

The Proposed PO, which is attached herein as Appendix 1, is designed to provide protections that are commensurate in scope with the protective order in parallel litigation between the parties before the United States International Trade Commission (“ITC”). The parties had originally negotiated this PO in connection with the meet and confer process leading up to Samsung Display’s recent motion for additional discovery (Paper 26) On March 4, 2024, counsel for Mianyang BOE informed counsel for Samsung Display that it has no objection to the Proposed PO.

Good cause exists to enter the Proposed PO. The protections provided by the Proposed PO are necessary because Samsung Display is seeking to submit its confidential documents as evidence reflecting the non-obviousness of the challenged claims of the ’599 Patent, and Samsung Display would suffer severe competitive harm if the confidential documents are shared with the public or individuals other than those who are allowed access under the Proposed PO. The Board’s Default Protective Order does not adequately protect against these competitive harms, including in its provision allowing certain company employees to access confidential information.

In addition, Samsung Display’s confidential documents include technical documents concerning its technologies that are subject to restrictions as NCT Information under South Korea’s ITA law, *i.e.*, technology and associated information deemed sufficiently important and sensitive that disclosure outside of

South Korea is prevented absent permission from South Korea's Ministry of Trade, Industry, and Energy, as it could harm national security or the national economy. Samsung Display obtained approval from South Korea's Ministry of Trade, Industry, and Energy to export these materials for production in litigation in the United States provided that they are not transferred or transported outside the United States by a recipient, nor made available to persons outside the United States by a recipient, except such materials may be transferred or transported to South Korea as necessary for use in depositions.

Good cause exists for entry of the Proposed PO in view of the highly commercially sensitive nature of Samsung Display's technical documents. Indeed, it is due to their sensitivity that these documents, which contain technical information related to the design, process, and manufacturing technology for AMOLED panels, are subject to certain restrictions under South Korea's ITA law. Accordingly, the heightened protections of paragraphs 11–14 of the Proposed PO are required to comply with Samsung Display's legal obligations under the ITA by preventing the unauthorized disclosure of these materials outside of the United

States or South Korea, and to protect against the unauthorized disclosure of these sensitive technical materials.²

The Board has previously granted similar requests to modify the Board’s Default Protective Order where, as here, a party is seeking to use confidential materials that were previously introduced in a parallel ITC litigation pursuant to an ITC protective order. *See, e.g., Apple Inc. v. Masimo Corp.*, IPR2022-01299, Paper 27 at 3–5, 9–10 (Feb. 17, 2023) (granting motion for a modified protective order that is “similar to . . . the protective order entered in the copending ITC Investigation” to add heightened confidentiality designations); *Bio-Rad Lab ’ys, Inc. v. 10X Genomics, Inc.*, IPR2019-00565, Paper 23 at 3–5 (July 22, 2019) (granting opposed motion to “comport the most significant differences between the Default Protective Order . . . with the Protective Order . . . in the related ITC action” because “essentially the same confidential information protected by the ITC protective order is being submitted here as well”); *Caterpillar Inc. v. Wirtgen Am., Inc.*, IPR2017-02188,

² In order to ensure compliance with the restrictions on disclosure of NCT Information outside of the United States, Patent Owner is filing the confidential materials as “Board and Filing Party Only.” Patent Owner is serving these materials on Counsel for Petitioner who are located in the United States and have signed acknowledgment letters pursuant to paragraph 4 of the Proposed PO.

Paper 19 at 2 (Aug. 22, 2018) (granting joint motion for entry of a modified protective order that “‘is similar in substantive protection to the ITC protective order’ in the related ITC investigation”); *One World Techs., Inc. v. The Chamberlain Grp., Inc.*, IPR2017-00126, Paper 38 at 4–5 (May 3, 2018) (granting joint motion for entry of a modified protective order with “additional restrictions [that] are needed to ensure the parties comply with the terms of the ITC protective order in the related ITC investigation”).

Accordingly, the Proposed PO seeks to modify the Board’s Default Protective Order in the following ways:

1. Replace default paragraph (1) with new paragraphs (1) and (2) to match the ITC protective order’s definition of confidential information and associated marking requirements;
2. Modify default paragraph (2) (now paragraph (3)) and remove default paragraph (3) to prohibit confidential information from being accessed by party employees;
3. Add new paragraph (4) to require that Outside Counsel and Experts read the Proposed PO and sign an Acknowledgement before they access confidential materials;

4. Add new paragraph (5), which matches the ITC protective order's provisions for the disclosure of confidential information to persons not listed in new paragraph (3);
5. Modify default paragraph (4) (now paragraph (6)) to clarify how confidential information is to be maintained;
6. Modify default paragraph (5) (now paragraph (7)) to permit confidential materials to be marked in a manner that prevents the need to re-stamp documents already produced in the ITC litigation;
7. Add new paragraph (9) to require that an expert be disclosed prior to accessing confidential information;
8. Add new paragraph (10) to require that certain remedial actions be taken in the event of disclosure of confidential information to unauthorized individuals;
9. Add new paragraphs (11)–(14) to comply with South Korea's ITA law restricting access to the relevant Samsung Display technical documents, including to provide that the competitively sensitive technical documents (which will be marked with the legend "NCT INFORMATION") will not be transferred or accessed outside of the United States, while allowing such materials to be transported to South Korea for use in depositions.

The proposed amendments to the Default Protective Order are appropriately tailored to provide additional protections to Samsung Display's highly sensitive materials without impeding their use for legitimate purposes in this proceeding. Accordingly, entering the Proposed PO will allow Samsung Display to fairly present its case, without unnecessarily exposing highly confidential information to the public. Therefore, Samsung Display respectfully requests that the Board accept and enter the agreed-upon Proposed PO submitted herewith as Appendix 1.

III. Conclusion

Samsung Display respectfully requests that the Patent Owner Response and Exhibits 2008, 2018, 2019, and 2046 be sealed, and that the protective order attached hereto be entered.

Date: March 8, 2024

Respectfully submitted,

By /David A. Garr/

David A. Garr

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Jared R. Frisch (*pro hac vice pending*)

Derek J. Andros (*pro hac vice pending*)

Counsel for Patent Owner

Appendix A

Proposed Protective Order

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

1. Confidential information is information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either (i) impairing the Board's ability to obtain such information as is necessary to perform its statutory function; or (ii) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Board is required by law to disclose such information.

2. Any information submitted in this Inter Partes Review, which is asserted by a producing party to contain or constitute confidential information shall be so designated by such producing party in writing, or orally at a deposition, conference or hearing, and shall be segregated from other information being submitted. Documents shall be clearly and prominently marked on their face with the legend: "PROTECTIVE ORDER MATERIAL," or a comparable notice, such as "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE

ORDER.” Such information, whether submitted in writing or in oral testimony, shall be treated in accordance with the terms of this protective order. The Board may determine that information alleged to be confidential is not confidential, or that its disclosure is necessary for the proper disposition of the proceeding, before, during or after the close of a hearing herein. If such a determination is made by the Board, opportunity shall be provided to the producing party of such information to argue its confidentiality prior to the time of such ruling.

3. In the absence of written permission from the producing party or by an order by the Board, access to confidential documents or business information submitted in accordance with the provisions of paragraph 2 above is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Outside Counsel. Outside counsel for parties to this Inter Partes Review, including necessary secretarial and support personnel assisting such counsel.

(B) Experts. Retained experts and their staff of a party in the proceeding who are employed for the purposes of this Inter Partes Review.

(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 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.

4. Confidential information submitted in accordance with the provisions of paragraph 2 above shall not be made available to any person designated in paragraph 3(A) and (B)¹ unless he or she shall have first read this order and shall have agreed, by letter served on the parties to this Inter Partes Review; (i) to be bound by the terms thereof; (ii) not to reveal such confidential information to anyone other than another person designated in paragraph 3; and (iii) to utilize such

¹ Consistent with paragraph 3(C), necessary secretarial and support personnel assisting counsel need not sign onto the protective order themselves because they are covered by counsel's signing onto the protective order. Likewise, necessary staff assisting a retained expert need not sign onto the protective order themselves because they are covered by the expert's signing onto the protective order.

confidential information solely for the purposes of this Inter Partes Review. The letter shall also include the Acknowledgement attached to this protective order. Any person designated in paragraph 3(B) should also certify 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.

5. If the Board orders, or if the producing party and all parties to the Inter Partes Review agree, that access to, or dissemination of information submitted as confidential information shall be made to persons not included in paragraph 3 above, such matter shall only be accessible to, or disseminated to, such persons based upon the conditions pertaining to, and obligations arising from this order, and such persons shall be considered subject to it, unless the Board finds that the information is not confidential information as defined in paragraph 1 thereof.

6. Persons receiving confidential information under this Protective Order 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 his or her own confidential information or confidential information of his or her employer;

(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 printed copies, which record the receiving party should be prepared to furnish upon a reasonable request.

7. Persons receiving confidential information under this Protective Order 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 submission shall be treated as confidential and remain under seal, unless the Board determines that the documents or information does not qualify for confidential treatment. The information shall remain under seal unless the Board

determines that some or all of the information 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 a comparable notice, such as “CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROCTIVE ORDER” and shall be produced in a manner that maintains its confidentiality.

8. Within 60 days after the final disposition of this proceeding, 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. No less than 5 business days prior to the initial disclosure to a proposed expert of any confidential information submitted in accordance with paragraph 2, the party proposing to use such expert shall submit in writing the name of such proposed expert and his or her educational and detailed employment history to the producing party. If the producing party objects to the disclosure of such confidential information to such proposed expert as inconsistent with the language or intent of this order or on other grounds, it shall notify the recipient in writing of its objection and the grounds therefor prior to the initial disclosure. The disclosure of such confidential information to such proposed expert shall be withheld pending resolution of the objection, whether informally between the parties or by the Board.

10. If confidential information submitted in accordance with paragraph 2 is disclosed to any person other than in the manner authorized by this protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the producing party and the Board and, without prejudice to other rights and remedies of the producing party, make every

effort to prevent further disclosure by it or by the person who was the recipient of such information.

11. Patent Owner's technical documents relating to AMOLED technology that are subject to restrictions under South Korea's Act on Prevention of Leakage and Protection of Industrial Technology as a protected "National Core Technology" shall be clearly and prominently marked on their face with the legend "NCT INFORMATION." Any materials designated "NCT INFORMATION" shall not be transferred or transported outside the United States by a recipient, nor made available to persons outside the United States by recipient, except that materials designated "NCT INFORMATION" may be transferred or transported to South Korea as necessary for use in depositions, subject to paragraph 12 below.

12. If a recipient makes printouts or photocopies of materials designated "NCT INFORMATION," the recipient shall ensure that such printed materials or photocopies are handled and kept in a secure area. A recipient may also temporarily keep the printouts or photocopies of "NCT INFORMATION" materials in: (i) the USPTO building for any hearing(s) relating to the discovery materials, for the dates associated with the hearing(s); (ii) the sites where any deposition(s) relating to the discovery materials are taken, provided that such deposition takes place in the United States or the Republic of Korea; and (iii) any intermediate location reasonably

necessary to transport the printouts or photocopies (e.g., a hotel prior to a hearing or deposition).

13. Parties may include excerpts of materials designated “NCT INFORMATION” in a document submitted to the USPTO, provided that the document is appropriately marked “NCT INFORMATION,” restricted to those who are entitled to have access to them as specified in this Order, that no more of the document is excerpted than is reasonably necessary, and that the document, if filed with the USPTO, is filed confidentially and under seal in accordance with Paragraph 7 and any other applicable USPTO rules, procedures, and orders.

14. Parties shall maintain a list of the names of all persons who have downloaded, viewed, or accessed materials designated “NCT INFORMATION,” and should be prepared to furnish the list upon a reasonable request upon final termination of the Inter Partes Review.

[CAPTION]

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

Proposed~~Default~~ Protective Order

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

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

1. Confidential information is information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either (i) impairing the Board’s ability to obtain such information as is necessary to perform its statutory function; or (ii) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Board is required by law to disclose such information.

2. Any information submitted in this *Inter Partes* Review, which is asserted by a producing party to contain or constitute confidential information shall be so designated by such producing party in writing, or orally at a deposition, conference or hearing, and shall be segregated from other information being submitted. Documents shall be clearly and prominently marked on their face with the legend:

“PROTECTIVE ORDER MATERIAL,” or a comparable notice, such as “CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER.” Such information, whether submitted in writing or in oral testimony, shall be treated in accordance with the terms of this protective order. The Board may determine that information alleged to be confidential is not confidential, or that its disclosure is necessary for the proper disposition of the proceeding, before, during or after the close of a hearing herein. If such a determination is made by the Board, opportunity shall be provided to the producing party of such information to argue its confidentiality prior to the time of such ruling.

3. ~~2. Access~~ In the absence of written permission from the producing party or by an order by the Board, access to confidential documents or business information submitted in accordance with the provisions of paragraph 2 above 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.~~ Outside Counsel.
Outside counsel for parties to this *Inter Partes* Review, including necessary secretarial and support personnel assisting such counsel.
- (B) ~~Party Representatives. Representatives of record for a party in the proceeding.~~

(B) ~~(C)~~ Experts. Retained experts and their staff 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~~ are employed for the purposes of this *Inter Partes* Review.

(C) ~~(D)~~ 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) ~~(E)~~ 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 in-house counsel and in-house counsel's support staff, who sign the Acknowledgement 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. 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. Confidential information submitted in accordance with the provisions of paragraph 2 above shall not be made available to any person designated in paragraph 3(A) and (B)¹ unless he or she shall have first read this order and shall have agreed, by letter served on the parties to this *Inter Partes* Review; (i) to be bound by the terms thereof; (ii) not to reveal such confidential information to anyone other than another person designated in paragraph 3; and (iii) to utilize such confidential information solely for the purposes of this *Inter Partes* Review. The letter shall also include the Acknowledgement attached to this protective order. Any person designated in paragraph 3(B) should also certify that they are not a competitor to any

¹Consistent with paragraph 3(C), necessary secretarial and support personnel assisting counsel need not sign onto the protective order themselves because they are covered by counsel's signing onto the protective order. Likewise, necessary staff assisting a retained expert need not sign onto the protective order themselves because they are covered by the expert's signing onto the protective order.

party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

5. If the Board orders, or if the producing party and all parties to the *Inter Partes* Review agree, that access to, or dissemination of information submitted as confidential information shall be made to persons not included in paragraph 3 above, such matter shall only be accessible to, or disseminated to, such persons based upon the conditions pertaining to, and obligations arising from this order, and such persons shall be considered subject to it, unless the Board finds that the information is not confidential information as defined in paragraph 1 thereof.

6. ~~4.~~ Persons receiving confidential information under this Protective Order 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 his or her own confidential information ~~not received from the disclosing party~~ or confidential information of his or her employer;
- (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~~printed copies, which record the receiving party should be prepared to furnish upon a reasonable request.

7. ~~5.~~ Persons receiving confidential information under this Protective Order 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 submission shall be treated as confidential and remain under seal, unless the Board determines that the documents or information ~~de~~does not ~~to~~ qualify for confidential treatment. The information shall remain under seal unless the Board determines that some or all of the information 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 a comparable notice, such as “CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROCTIVE ORDER” and shall be produced in a manner that maintains its confidentiality.

8. ~~6.~~ Within 60 days after the final disposition of this ~~action~~proceeding,

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. No less than 5 business days prior to the initial disclosure to a proposed expert of any confidential information submitted in accordance with paragraph 2, the party proposing to use such expert shall submit in writing the name of such proposed expert and his or her educational and detailed employment history to the producing party. If the producing party objects to the disclosure of such confidential information to such proposed expert as inconsistent with the language or intent of this order or on other grounds, it shall notify the recipient in writing of its objection and the grounds therefor prior to the initial disclosure. The disclosure of such confidential information to such proposed expert shall be withheld pending resolution of the objection, whether informally between the parties or by the Board.

10. If confidential information submitted in accordance with paragraph 2 is disclosed to any person other than in the manner authorized by this protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the producing party and the Board and, without prejudice to other rights and remedies of the producing party, make every effort to prevent further disclosure by it or by the person who was the recipient of such information.

11. Patent Owner's technical documents relating to AMOLED technology that are subject to restrictions under South Korea's Act on Prevention of Leakage and Protection of Industrial Technology as a protected "National Core Technology" shall be clearly and prominently marked on their face with the legend "NCT INFORMATION." Any materials designated "NCT INFORMATION" shall not be transferred or transported outside the United States by a recipient, nor made available to persons outside the United States by recipient, except that materials designated "NCT INFORMATION" may be transferred or transported to South Korea as necessary for use in depositions, subject to paragraph 12 below.

12. If a recipient makes printouts or photocopies of materials designated "NCT INFORMATION," the recipient shall ensure that such printed materials or photocopies are handled and kept in a secure area. A recipient may also temporarily keep the printouts or photocopies of "NCT INFORMATION" materials in: (i) the USPTO building for any hearing(s) relating to the discovery materials, for the dates associated with the hearing(s); (ii) the sites where any deposition(s) relating to the discovery materials are taken, provided that such deposition takes place in the United States or the Republic of Korea; and (iii) any intermediate location reasonably necessary to transport the printouts or photocopies (e.g., a hotel prior to a hearing or deposition).

13. Parties may include excerpts of materials designated "NCT

INFORMATION” in a document submitted to the USPTO, provided that the document is appropriately marked “NCT INFORMATION,” restricted to those who are entitled to have access to them as specified in this Order, that no more of the document is excerpted than is reasonably necessary, and that the document, if filed with the USPTO, is filed confidentially and under seal in accordance with Paragraph 7 and any other applicable USPTO rules, procedures, and orders.

14. Parties shall maintain a list of the names of all persons who have downloaded, viewed, or accessed materials designated “NCT INFORMATION,” and should be prepared to furnish the list upon a reasonable request upon final termination of the *Inter Partes* Review.~~(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

I, the undersigned, on behalf of, _____, 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]

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that the foregoing Patent Owner's Motion for Seal and for Entry of a Proposed Protective Order was served by electronic mail on the following counsel of record for petitioner:

Travis Jensen (T61PTABDocket@orrick.com)
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Date: March 8, 2024

/David A. Garr/

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