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Paper 54
Date: August 15, 2024

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.

IPR2023-00941
Patent 7,414,599 B2

Before JAMESON LEE, TERRENCE W. MCMILLIN, and JOHN A. HUDALLA, *Administrative Patent Judges.*

LEE, *Administrative Patent Judge*.

PROTECTIVE ORDER
37 C.F.R. § 42.54

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 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.

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 paragraphs 3(A) and (B)[1] unless he or she shall have first read

[1] Consistent with paragraph 3(C), necessary secretarial and support personnel assisting counsel need not sign onto the protective order

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 party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding. This paragraph does not apply to Office personnel who make information available to a person designated in paragraphs 3(A) and (B).

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:

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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.

(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, and in the case of a recipient who is not Office personnel, which efforts shall be no less rigorously 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 who is not Office personnel 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 PROTECTIVE 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. This paragraph does not apply to recipients who are Office personnel. 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. This paragraph does not apply to recipients who are Office personnel. 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]

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