

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SEMICONDUCTOR COMPONENTS INDUSTRIES, LLC,
Petitioner,

v.

GREENTHREAD LLC,
Patent Owner.

IPR2023-01242 (Patent 11,121,222 B2)
IPR2023-01243 (Patent 10,510,842 B2)
IPR2023-01244 (Patent 11,121,222 B2)¹

Before DONNA M. PRAISS, JON B. TORNQUIST,
MONICA S. ULLAGADDI, and JULIA HEANEY,
*Administrative Patent Judges.*²

PER CURIAM.

ORDER

Granting-in-Part Patent Owner's Motions to Seal
and
Denying Petitioner's Motion to Seal
37 C.F.R. §§ 42.14, 42.54

¹ The combined caption is for administrative convenience only and does not indicate that IPR2023-01242, IPR2023-01243, and IPR2023-01244 have been joined. The parties are not authorized to use this caption without express permission of the Board.

² This listing of Administrative Patent Judges does not indicate an expanded panel.

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I. INTRODUCTION

Patent Owner filed Motions to Seal (Papers 7, 13, 17, 24, 27, 36, 46, “Patent Owner’s Motions”)³ in each of the above identified proceedings, in which Patent Owner moves to seal, in their entirety: Patent Owner’s Motion for Additional Discovery (Paper 8), Patent Owner’s Reply in Support of the Motion for Additional Discovery (Paper 14), Patent Owner’s Preliminary Response (Paper 18), Patent Owner’s Preliminary Sur-Reply (Paper 28), Patent Owner’s Request for Director Review (Paper 37), and Patent Owner’s Response (Paper 47); Petitioner’s Reply to the Preliminary Response (Paper 22); and Exhibits 2002, 2014, 2022, 2028, 2029, 2056, and 2072.⁴ Patent Owner requests entry of a modified version of the Board’s Default Protective Order.⁵ *See* Paper 24, App. A (“Modified Protective Order”), App. B (redline version of Board’s Default Protective Order)); *see also* Papers 7, 13, 17, 27, 36, 46.⁶ Petitioner opposes several of Patent Owner’s Motions. *See* Papers 21, 29, 40, 52.

³ For expediency, we cite to Motions in IPR2023-01242. Similar Motions were filed in IPR2023-01243 and IPR2023-01244.

⁴ Patent Owner also references Exhibits 2049 through 2052 in one of its Motions to Seal (Paper 24), but does not specifically request sealing of these exhibits.

⁵ Patent Trial and Appeal Board Consolidated Trial Practice Guide, App. B (Nov. 2019) (“Trial Practice Guide”), *available at* <http://www.uspto.gov/TrialPracticeGuideConsolidated>.

⁶ Patent Owner initially requested that the Board’s Default Protective Order apply to Papers 8, 14, and 18 and Exhibits 2002, 2014, 2022, 2028, 2029. *See* Papers 7, 13, 17. Patent Owner later updated this request, seeking to enter the Modified Protective Order. *See* Paper 24, 4.

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Petitioner filed a Motion to Seal in each of the above identified proceedings (Paper 10, “Petitioner’s Motion”), in which Petitioner moves to seal Petitioner’s Opposition to Patent Owner’s Motion for Additional Discovery (Paper 11), as well as Exhibits 1046 and 1047. Patent Owner has not opposed Petitioner’s Motion.

In an email sent on July 10, 2024, the Board provided guidance to the parties and the need to file proposed redacted versions of documents sought to be sealed. Ex. 3003. Patent Owner has filed redacted copies of certain papers and exhibits. *See* Papers 54–59 (corresponding to Papers 8, 14, 18, 28, 37, 47); Exhibits 2002, 2014, 2022, 2028, 2072 (redacted versions)).

For the reasons discussed below, we *grant-in-part* Patent Owner’s Motions to Seal and *enter* the Modified Protective Order, and we *deny* Petitioner’s Motion to Seal without prejudice.

II. MOTIONS TO SEAL

The record of an *inter partes* review shall be made available to the public, except as otherwise ordered, and any documents filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. Only “confidential information” may be protected against public disclosure. 35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54. The Board observes a strong public policy in favor of making information filed in its proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

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The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). For a sufficient showing for a motion to seal, the Board has required 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.

Argentum, Paper 27 at 3–4; *see also Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB April 6, 2015) (requiring a showing that information has not been “excessively redacted”).

Regarding Patent Owner’s Motions, Patent Owner explains that the papers and exhibits sought to be protected “contain sensitive, confidential, and non-public business information, including licensing information.” Paper 7, 2; *see also* Paper 13, 2; Paper 17, 2; Paper 24, 2–3; Paper 27, 2; Paper 36, 2–3. Patent Owner also explains, regarding its Response (Paper 47) and Exhibit 2072, that “Patent Owner is under confidentiality obligations regarding licensing information referenced therein.” Paper 46, 1.

Petitioner opposes sealing Patent Owner’s Motion for Additional Discovery (Paper 8) and Exhibits 2002 and 2014 in their entirety, because “Patent Owner has not shown that all information contained in the documents it seeks to seal is ‘truly confidential,’ or that any ‘concrete harm’ will result from their public disclosure.” Paper 21, 3. In the alternative to its request that we deny Patent Owner’s Motions with respect to these

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documents, “Petitioner requests that the Board order that Patent Owner submit redacted versions of all previous[ly] sealed materials (except for Exhibit 2022).” *Id.* Petitioner offers similar reasons to oppose sealing Petitioner’s Reply to Patent Owner’s Preliminary Response (Paper 22), Request for Director Review (Paper 37), Response (Paper 47), and Exhibit 2072 in their entirety. *See* Paper 29, 1–3; Paper 40, 1–3; Paper 52, 1–4.

Upon review of Patent Owner’s Motions, and in view of Petitioner’s oppositions, we are persuaded that good cause exists to seal some of the unredacted versions of the papers and exhibits identified in Patent Owner’s Motions. *See* Papers 7, 13, 17, 27, 36, 46. Patent Owner has narrowly tailored the redacted portions of each paper and exhibit so as to protect sensitive or otherwise confidential information while balancing the public interest in an open record. *See* Papers 54–59; Exhibits 2002, 2014, 2022, 2028, 2072 (redacted versions).

Patent Owner has not, however, submitted redacted versions of Petitioner’s Reply to Patent Owner’s Preliminary Response (Paper 22) or Exhibits 2029 and 2056. We are thus not persuaded that good cause exists to seal these documents identified in Patent Owner’s Motions at this juncture. *See* Papers 13, 24, 27. We provide Patent Owner the opportunity to file proposed redacted versions of Petitioner’s Reply to Patent Owner’s Preliminary Response (Paper 22), as well as Exhibits 2029 and 2056.

Regarding Petitioner’s Motion, Petitioner explains that it moved to seal its Opposition to Patent Owner’s Motion for Additional Discovery (Paper 11), along with Exhibits 1046 and 1047, because they include

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“material that Patent Owner moved to seal,” and “to the extent Patent Owner’s arguments in support of its Motion to Seal have merit . . . those arguments would apply similarly to the present Motion to Seal.” Paper 10, 1–2 (citing Paper 7).

Upon review of Petitioner’s Motion, we are not persuaded good cause exists to seal the documents identified in Petitioner’s Motion at this juncture. Petitioner has not filed redacted versions of its Opposition to Patent Owner’s Motion for Additional Discovery (Paper 11) or Exhibits 1046 and 1047, as requested in the Board’s email sent on July 10, 2024. *See* Ex. 3003. Therefore, even though Patent Owner has not opposed Petitioner’s Motion, we deny without prejudice Petitioner’s Motion, and provide Petitioner the opportunity to file proposed redacted versions of its Opposition to Patent Owner’s Motion for Additional Discovery (Paper 11), as well as Exhibits 1046 and 1047.

III. MODIFIED PROTECTIVE ORDER

The Board may, for good cause, issue a protective order “to protect a party or person from disclosing confidential information.” 37 C.F.R. § 42.54(a). A protective order is not entered by default but must be proposed by one or more parties and must be approved and entered by the Board. Trial Practice Guide 19–20, 107. The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a Default Protective Order. *See id.* 19–20, 107–122. The parties may propose modifications to the Default Protective Order and the Board will generally

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accept such proposed changes if they are consistent with the integrity and efficient administration of the proceedings. *Id.* at 115.

Patent Owner’s Modified Protective Order includes the “PROTECTIVE ORDER MATERIAL” tier of protection for confidential information in the Board’s Default Protective Order (*see* Trial Practice Guide 117–122), and adds the “PROTECTIVE ORDER MATERIAL/ATTORNEYS’ EYES ONLY” tier of protection, which covers “materials even more sensitive,” for example, “licensing materials of a first party, whose disclosure to in-house counsel of an opposing party would create a substantial risk of serious harm to the first party.” Paper 24, App. A ¶ 1. The Modified Protective Order includes in the more sensitive tier of protection materials marked “PROTECTIVE ORDER MATERIAL/ATTORNEYS’ EYES ONLY,” and, specifically, Papers 8, 11, 14, and 18 and Exhibits 2022 and 2028. *Id.*

Petitioner opposes the entry of Patent Owner’s Modified Protective Order because Patent Owner “has not explained why, months after requesting entry of the default protective order, it is now attempting entry of an amended protective order.” Paper 29, 3.

After reviewing the proposed modifications to the Board’s Default Protective Order in Patent Owner’s Modified Protective Order, we determine that the changes are consistent with the integrity and efficient administration of the proceedings. In addition to the documents specifically identified in the Modified Protective Order as requiring the more sensitive tier of protection (Papers 8, 11, 14, 18; Exhibits 2022, 2028), Patent Owner

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indicates that Exhibit 2072 should also be protected as “PROTECTIVE ORDER/ATTORNEYS’ EYES ONLY,” because it “contains highly competitively sensitive information related to licensing, including precise license terms and rates that should only be accessible to persons that qualify under Paragraph 4 of the” Modified Protective Order. Paper 46. Each of the documents sought to be protected at the more sensitive tier for attorneys’ eyes only have been only minimally redacted (*see* Papers 54, 55, 66 (corresponding to Papers 8, 14, 18); Exhibits 2022, 2028, 2072 (redacted versions)), with the exception of Petitioner’s Opposition to Patent Owner’s Motion for Additional Discovery (Paper 11), for which Petitioner has not yet filed a redacted version. Accordingly, we enter Patent Owner’s Modified Protective Order.

IV. ORDER

Accordingly, it is

ORDERED that Patent Owner’s Motions are *granted-in-part* in each of the above-identified proceedings with respect to sealing the unredacted versions of:

Papers 8, 14, 18, 28, 37, and 47 and Exhibits 2002, 2014, 2022, 2028, 2072 in IPR2023-01242;

Papers 7, 13, 17, 27, 36, and 46 and Exhibits 2002, 2014, 2022, 2028, 2072 in IPR2023-01243; and

Papers 8, 14, 18, 28, 37, and 46 and Exhibits 2002, 2014, 2022, 2028, 2072 in IPR2023-01244;

FURTHER ORDERED that Patent Owner is authorized to file new

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motions to seal:

Paper 22 and Exhibits 2029 and 2056 in IPR2023-01242;
Paper 21 and Exhibits 2029 and 2056 in IPR2023-01243; and
Paper 22 and Exhibits 2029 and 2056 in IPR2023-01244, along with
proposed redacted versions of these papers and exhibits;

FURTHER ORDERED that a Modified Protective Order (IPR2023-01242, Paper 24, App. A; IPR2023-01243, Paper 23, App. A; IPR2023-01244, Paper 24, App. A) is *entered* in each respective proceeding; and

FURTHER ORDERED that Petitioner's Motions are *denied* in each of the above-identified proceedings without prejudice; Petitioner is authorized to file new motions to seal:

Paper 11 and Exhibits 1046 and 1047 in IPR2023-01242;
Paper 10 and Exhibits 1046 and 1047 in IPR2023-01243; and
Paper 11 and Exhibits 1046 and 1047 in IPR2023-01244, along with
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