

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONOS, INC.,
Petitioner,

v.

GOOGLE LLC,
Patent Owner.

Case No. IPR2023-01288
U.S. Patent No. 9,632,748

PETITIONER SONOS, INC.'S UNOPPOSED MOTION TO SEAL

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner Sonos, Inc. (“Sonos”) respectfully requests the Board authorize the filing under seal of:

- Ex.1022 (excerpts of Sonos’s ITC expert’s non-infringement report);
- Ex.1023 (excerpts of Sonos’s ITC non-infringement contentions)

To facilitate this, Sonos respectfully requests the Board enter the Proposed Protective Order, a copy of which is attached hereto as Appendix A.

These documents contain Sonos’s highly confidential business and technical information concerning the operation of Sonos’s commercial products that are the core of Sonos’s business. Public disclosure of this information would significantly harm Sonos because it would allow competitors, including Google, access to Sonos’s sensitive technical and business information.

This information was previously produced by Sonos in the related ITC Investigation under the Attorneys’ Eyes Only tier pursuant to a protective order that Sonos and Google agreed on and the ALJ entered. For this reason, and for at least the additional reasons that Sonos and Google are competitors, it is widely accepted that highly-sensitive and confidential business information should be afforded protections from public disclosure, the confidential nature of the information that is the subject of the Proposed Joint Protective Order, and the fact that Google does not oppose this motion, Sonos respectfully urges the Board to grant this motion.

Specifically, the negotiated protections in the existing ITC protective order should be preserved. In this regard, sensitive technical and business information has been produced in the ITC under specific provisions to preserve its confidentiality. For example, under the ITC protective order, sensitive technical and business is not permitted to be seen by in-house counsel or other employees of the non-producing party. These documents may be seen by outside counsel of record, their employees, outside consultants or experts, and the court. Sonos requests that this limitation on access to the Protective Order Material, which was negotiated between and agreed to by both Sonos and Google in the ITC, should likewise be approved by the Board in this proceeding. Sonos only seeks to seal information that is already under seal pursuant to the ITC protective order.

Attached as Appendix A is a copy of the Board's Default Protective Order, with modifications, that the parties jointly request be entered. A redline copy showing the differences between the proposed Joint Protective Order (Appendix A) and the Board's Default Protective Order is attached as Appendix B. Sonos respectfully requests that the Board's Default Protective Order, as modified and attached as Appendix A, govern these materials in this proceeding.

Pursuant to 37 C.F.R. § 42.54, Sonos conferred with Google and Google does not oppose this motion to seal. Google has not indicated whether it objects to Sonos's proposed protective order attached hereto as Appendix A.

II. GOOD CAUSE EXISTS TO SEAL THE CONFIDENTIAL EXHIBITS

The Trial Practice Guide provides that “the rules aim to 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.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, the rules “identify confidential information in a manner consistent with Fed. R. Civ. P. 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.* (citing 37 C.F.R. § 42.54).

Here, good cause exists to seal the confidential exhibits. These exhibits contain detailed internal technical description of the functionality of Sonos’s commercial products, including detailed discussion on how the source code operates to carry out voice arbitration. Each contains highly sensitive, non-public, technical information concerning the internal operation and source code functionality of Sonos’s commercial products, the disclosure of which would competitively harm Sonos. And Google does not oppose this motion to seal.

Ex.1022 is excerpts of the expert report submitted by Dr. Michael Johnson on behalf of Sonos in the ITC investigation. The exhibit contains detailed technical information describing the innerworkings of voice functionality in Sonos’s commercial products. In particular, the exhibit describes how Sonos’s source code operates on Sonos’s commercial products to carry out speech recognition and

arbitration.

Ex.1023 is Sonos's initial non-infringement contentions from the ITC case. Like Dr. Johnson's expert report, these non-infringement contentions contain detailed technical descriptions of the innerworkings of Sonos's commercial products, including descriptions of how Sonos's source code operates on Sonos's products to carry out speech recognition and arbitration.

Accordingly, public disclosure of this material, including the disclosure to in-house personnel at companies that offer competing products, such as Google, would significantly harm Sonos's business and put Sonos at a serious competitive disadvantage by providing such competitors with an unfair business advantage against Sonos.

III. CONCLUSION

For the foregoing reasons, Sonos respectfully requests the Board grant this motion and enter the Joint Proposed Protective Order attached as Appendix A.

Respectfully submitted,

LEE, SULLIVAN, SHEA & SMITH LLP

Dated: January 5, 2024

/Michael P. Boyea/

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Counsel for Petitioner Sonos, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby confirms that the foregoing MOTION TO SEAL was served on January 5, 2024 via email directed to counsel of record for the Patent Owner at the following:

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Cory C. Bell
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/Michael P. Boyea/

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Appendix A

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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[PROPOSED] PROTECTIVE ORDER

[PROPOSED] 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 - CONFIDENTIAL” or “PROTECTIVE ORDER MATERIAL – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

(B) Outside Counsel. Outside Counsel of record for a party in the proceeding.

(C) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

(D) In-house Counsel. In-house counsel of a party.

(E) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons

who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

(F) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. To the extent a producing Party believes that certain material qualifying to be designated “PROTECTIVE ORDER MATERIAL – CONFIDENTIAL” is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such material “PROTECTIVE ORDER MATERIAL – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” For Protected Material designated PROTECTIVE ORDER MATERIAL – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 2(B)-

(C) and (E)-(F).

4. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in paragraphs 2(A)-(F), 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.

5. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

- (A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;
- (B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;
- (C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain

the confidentiality of information received that is designated as confidential;
and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

6. 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 submission shall be treated as confidential and remain under seal, unless the Board determines that the documents or information do 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 – CONFIDENTIAL,” or “PROTECTIVE ORDER MATERIAL – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and shall be produced in a manner that maintains its confidentiality.

7. This Order does not alter any obligations under orders entered in other

proceedings (including *Certain Audio Players and Components Thereof*, Inv. No. 337-TA-1330 (“1330 Investigation”), or of any person who obtains, receives, has access to, or otherwise learns, in whole or in part, confidential information designated under the operable protective order in the 1330 Investigation. This Order does not purport to supersede or otherwise alter any protective order issued by any court.

8. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

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Acknowledgment for Access to Protective Order Material

I _____, affirm that I have read the Protective Order entered in Case IPR2023-01288; 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, except that any portion of the confidential material that is obtained by other, appropriate means, such as through discovery in a district court or ITC proceeding, that portion of the confidential material may be used in the other proceeding, subject to any confidentiality terms applicable to that portion of the confidential material in the other proceeding; 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.

Dated: _____

Signature: _____

Appendix B

UNITED STATES PATENT AND TRADEMARK OFFICE

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[PROPOSED] PROTECTIVE ORDER

~~DEFAULT PROTECTIVE ORDER~~

~~The following Default Protective Order will govern the filing and treatment of confidential information in the proceeding:~~

~~Default~~ [PROPOSED] 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 - CONFIDENTIAL-” or “PROTECTIVE ORDER MATERIAL – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:
 - (A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.
 - (B) Party ~~Representatives~~ Outside Counsel. ~~Representatives~~ Outside Counsel of record for a party in the proceeding.
 - (C) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

- (D) In-house eCounsel. In-house counsel of a party.
- (E) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.
- (F) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. To the extent a producing Party believes that certain material qualifying to be designated “PROTECTIVE ORDER MATERIAL – CONFIDENTIAL” is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such material “PROTECTIVE ORDER MATERIAL – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” For Protected

Material designated PROTECTIVE ORDER MATERIAL – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 2(B)-(C) and (E)-(F).

3.4. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in paragraphs 2(A)-(F) 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.

4.5. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

- (A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;
- (B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the

disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5.6. 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 submission shall be treated as confidential and remain under seal, unless the Board determines that the documents or information do 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 — CONFIDENTIAL,” or “PROTECTIVE ORDER MATERIAL — HIGHLY

CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and shall be produced in a manner that maintains its confidentiality.

7. This Order does not alter any obligations under orders entered in other proceedings (including *Certain Audio Players and Components Thereof*, Inv. No. 337-TA-1330 (“1330 Investigation”), or of any person who obtains, receives, has access to, or otherwise learns, in whole or in part, confidential information designated under the operable protective order in the 1330 Investigation. This Order does not purport to supersede or otherwise alter any protective order issued by any court.

6.8. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

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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.

Dated: _____

Signature: _____