

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELTA ELECTRONICS, INC.

Petitioner

v.

VICOR CORPORATION

Patent Owner

IPR2024-00134
Patent No. 10,199,950

**PATENT OWNER'S UNOPPOSED MOTION TO MAINTAIN EXHIBIT
2032 UNDER SEAL AND EXTEND THE DEADLINE TO FILE A MOTION
TO EXPUNGE**

I. STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. §§42.5 and 42.56, Patent Owner Vicor Corporation (“Vicor”) respectfully submits this Motion to maintain Exhibit 2032 under seal, and to extend the deadline to file a motion to expunge until 45 days after the termination of proceedings before the Board.

Exhibit 2032 is currently under seal and contains Patent Owner’s confidential information. Patent Owner certifies that Exhibit 2032 has not otherwise been made public.

As noted in the Consolidated Trial Practice Guide, information filed under seal “ordinarily would become public 45 days after denial of a petition to institute a trial”. *See* CTPG, p. 21. In the present matter, a decision denying institution was issued on May 17, 2024. Petitioner, however, filed a Request for Director Review on June 17, 2024. Given the Petitioner’s Request, Patent Owner respectfully moves to maintain Exhibit 2032 under seal, and to extend the deadline to file a motion to expunge until 45 days after the final resolution of proceedings in the present inter partes review.

Patent Owner has conferred with Petitioner and Petitioner’s counsel indicated that Petitioner does not oppose the present motion.

For the reasons set forth below, Patent Owner requests Exhibit 2032 be maintained under seal and the deadline for a motion to expunge be extended until

45 days after the termination of proceedings in the present inter partes review.

II. ARGUMENT

A. Reason for requested relief

Sealed confidential information subject to a protective order will ordinarily become public forty-five days after final judgment in a trial unless a motion to expunge is filed. Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012); 37 C.F.R. § 42.56. On May 17, 2024, the Board issued its Institution Decision in this proceeding. *See* Paper 8. Petitioner filed a Request for Director Review on June 30, 2024. *See* Paper 9. The Request is not expected to be resolved prior to the default date for filing a motion to expunge, which is July 1, 2024.

Because the deadline for filing a motion to expunge falls before the likely timeframe for a decision on the Petitioner's Request for Director Review, and in order to preserve the record for any further proceedings that might result, Patent Owner respectfully requests that the Board maintain Exhibit 2032 under seal during the pendency of proceedings in this inter partes review, and further respectfully requests that the deadline for filing a motion to expunge be extended to 45 days after the final resolution of such proceedings.

The Board has the authority to “determine a proper course of conduct in a proceeding” and “may enter non-final orders to administer the proceeding.” 37 C.F.R. § 42.5. Thus, to preserve the record for Director Review and any potential

follow-on proceedings while simultaneously preserving the Patent Owner's opportunity to expunge confidential information from the record, the Patent Owner requests that the Board preserve the entire record and maintain under seal Exhibit 2032 until at least 45 days after conclusion of proceedings. *See analogously Arctic Cat, Inc. v. Polaris Indus., Inc.*, IPR2014-01427, Paper 62 at 2-3 (PTAB Mar. 8, 2016) (extending due date of motion to expunge 45 days from filing of Federal Circuit mandate).

B. Good cause exists to maintain Exhibit 2032 under seal

Good cause exists to maintain Exhibit 2032 under seal.

1. The document sought to be expunged contains confidential technical information.

As explained in Patent Owner's Motion to Seal and for Entry of Protective Order (Paper 7), Exhibit 2032 contains confidential information as defined by the PTAB's rules. Specifically, Exhibit 2032 includes confidential and highly-sensitive information regarding the structure and operation of Vicor's NBM2317 products, including circuit diagrams. The information in Exhibit 2032 is not publicly available and continues to be confidential.

Vicor faces concrete harm if the information is made available to the public. In particular, competitors and other third-parties could exploit the information for their own benefit to design competitive products, thereby saving time and research

effort and attaining a competitive advantage merely from having access to the confidential information.

Because the exhibit Patent Owner seeks to maintain under seal clearly contains non- public proprietary information that the Patent Owner maintains as confidential, that exhibit meets the definition of confidential information that may be maintained under seal. *See* 37 C.F.R. § 42.54 and 37 C.F.R. § 42.2.

2. Patent Owner's interest in preserving the confidentiality of Exhibit 2032 outweighs the public's interest in maintaining a complete and understandable file history.

Patent Owner's interest in preserving the confidentiality of Exhibit 2032 outweighs the public's interest in maintaining a complete file history. In its Institution Decision, the Board did not rely on or disclose the information contained in Exhibit 2032. *See* Paper 8 at 50. Exhibit 2032 also does not appear to be implicated in the Petitioner's pending request for Director Review.

Furthermore, the amount of material to be protected is limited and not important for understanding the nature of Patent Owner's arguments. Patent Owner has kept the confidential information limited to a single exhibit, such that the public is able to understand the basis of Patent Owner's arguments without needing the confidential information at issue. *See* Exhibit 2032. As stated in the non-confidential declaration of Patrizio Vinciarelli (Exhibit 2030, ¶35), it is clear that Exhibit 2032 is intended to show that Vicor NBM2317 products meet certain

claims of the '950, '481, and '761 patents at-issue in three IPR proceedings filed by Delta (IPR2024-00134, IPR2024-00187, and IPR2024-00227). Thus, the import of the content of Exhibit 2032 will be known to the public reviewing the file, but not the specific implementation details of Vicor's products, which remain confidential. Thus, any public interest in having access to Exhibit 2032 does not outweigh the harm faced by Vicor. *See RPX*, IPR2014-00171, Paper 62 at 6 (allowing redaction of sentence in Decision Denying Institution where "[t]he sentence is not required for a complete understanding of the record and is not material to the Decision Denying Institution."); *Atlanta Gas*, IPR2013-00453 at 4 (granting motion to expunge where "[a]fter expungement of the documents requested by Petitioner, the record will retain material that provides the factual underpinnings for our Termination Order.").

I. CONCLUSION

For at least these reasons, Patent Owner respectfully requests Exhibit 2032 be maintained under seal and the deadline for a motion to expunge be extended until 45 days after the termination of proceedings in the present inter partes review.

Date: <u>June 21, 2024</u>	<u>/Matthew A. Smith/ (RN 49,003)</u> Matthew A. Smith SMITH BALUCH LLP 700 Pennsylvania Ave SE, Ste 2060 Washington, DC 20003 (202) 669-6207 smith@smithbaluch.com
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	<i>Counsel for Patent Owner Vicor Corporation</i>
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing UNOPPOSED MOTION TO MAINTAIN EXHIBIT 2032 UNDER SEAL AND EXTEND THE DEADLINE TO FILE A MOTION TO EXPUNGE was served by electronic mail on June 21, 2024, on the Petitioner's counsel of record at the United States Patent & Trademark Office having the following addresses:

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Date: June 21, 2024

/Matthew A. Smith/ (RN 49,003)

CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the foregoing UNOPPOSED MOTION TO MAINTAIN EXHIBIT 2032 UNDER SEAL AND EXTEND THE DEADLINE TO FILE A MOTION TO EXPUNGE contains 1063 words according to the word processing program used to prepare it.

Date: June 21, 2024

/Matthew A. Smith/ (RN 49,003)