

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELTA ELECTRONICS, INC.

Petitioner

v.

VICOR CORPORATION

Patent Owner

IPR2024-00187
Patent No. 9,166,481

PATENT OWNER UNOPPOSED MOTION TO SEAL EXHIBIT 2032

I. STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Vicor Corporation (“Vicor”) respectfully submits this Motion to Seal Exhibit 2032 (“Motion”). The Parties have agreed to the provisions the Stipulated Protective Order attached as Appendix A, which is a modified version of the Default Protective Order. Good cause exists for sealing the identified document in accordance with the Stipulated Protective Order and standards governing sealing.

A. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

Although “the default rule is that all papers filed in an *inter partes* review are open and available for access by the public,” a party may file a motion with the Board to seal confidential information that is protected from disclosure. *Garmin v. Cuozzo*, IPR2012-00001, Paper No. 36. “The standard for granting a motion to seal is ‘for good cause.’” *Id.* (quoting 37 C.F.R § 42.54). The PTAB Consolidated Trial Practice Guide November 2019, at 19, states that the “rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.”

Exhibit 2032 includes confidential and highly-sensitive business information of Vicor. In particular, Exhibit 2032 includes highly-sensitive information regarding the structure and operation of certain Vicor products. This

information is not publicly available, and has been and continues to be intended to remain confidential.

Vicor faces concrete harm if their confidential information is released to the public. The confidential information includes highly-sensitive details regarding the design of Vicor's products, including circuit diagrams. Competitors and other third-parties could exploit the information for their own benefit to design competitive products, thereby saving time and research effort. There exists a genuine need to rely on the confidential information in Ex. 2032 in this proceeding.

On balance, the harm faced by Vicor in making the information publicly available outweighs any interest in releasing it to the public. As stated in the non-confidential declaration of Patrizio Vinciarelli, 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 the 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 the redacted portions is minimal, and does not outweigh the harm faced by Vicor.

Accordingly, good cause exists for sealing Ex. 2032, and Vicor respectfully

moves to file under seal Ex. 2032.

I. PROTECTIVE ORDER

Vicor respectfully requests that the Board enter the Stipulated Protective Order attached as Appendix A to protect the highly sensitive and confidential information contained in Ex. 2032. The Parties agreed to a modified version of the Default Protective Order (Consolidated Trial Practice Guide November 2019 at 117-22). In comparison to the Default Protective Order, the Stipulated Protective Order in Appendix A contains an additional designation “PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS’ EYES ONLY” for confidential material and restricts the material to Outside Counsel, Experts, Office Staff and Support Personnel. In addition, the Stipulated Protective Order provides that Support Personnel shall also include support personnel of outside counsel of record for a party in the proceeding. *See* Appendix B (redline version showing changes to the Default Protective Order).

Good cause exists for these restrictions as the Board has recognized a necessity for similar designations on confidential material in other IPR proceedings. *See, e.g., Xactware v. Sols., Inc. v. Eagle View Techs., Inc.*, Case IPR2016-00589, Paper 33 at 2-3 (PTAB Nov. 23, 2016); *VIZIO, Inc. v. Nichia Corp.*, IPR2017-01623, Paper 73 at 5 (PTAB Jan. 9, 2019). Here, the parties are competitors, and the more limited access provided by the “PROTECTIVE ORDER MATERIAL – OUTSIDE

ATTORNEYS' EYES ONLY" designation is necessary to protect Vicor's confidential information from potential use by other companies and/or potential exposure to the public. Moreover, the PTAB Consolidated Trial Practice Guide states that "the parties may agree to modify the Default Protective Order to provide additional tiers or categories of confidential information, such as 'Attorneys' Eyes Only," and that "[t]he Board will presumptively accept agreed-to changes that provide additional categories of confidentiality as long as they are reasonable and adequately define what types of materials are to be included in the additional categories." Consolidated Trial Practice Guide November 2019 at 115-116. The parties in this proceeding have agreed to the additional designation "PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS' EYES ONLY," and the proposed Stipulated Protective Order reasonably limits its applicability to "confidential information that the designating party reasonably believes to be highly sensitive business information, the disclosure of which is likely to cause significant harm to the business or competitive position of the designating party or would violate confidentiality agreements with third parties."

II. CERTIFICATION OF CONFERENCE WITH AFFECTED PARTIES PURSUANT TO 37 C.F.R. § 42.54

Vicor and Petitioner Delta Electronics, Inc. ("Delta") conferred regarding this Motion and the attached Stipulated Protective Order (Appendix A). The parties agreed to the provisions of the Stipulated Protective Order, and Delta

indicated that it would not oppose a motion to seal claim charts mapping Vicor products to the claims.

Date: <u>February 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 <i>Counsel for Patent Owner Vicor Corporation</i>
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion to Seal Ex. 2032, together with all exhibits and other documents filed therewith, was served by electronic mail on February 21, 2024, on the petitioner's counsel of record at the United States Patent & Trademark Office having the following addresses:

481_IPR_Delta@kirkland.com
russell.levine@kirkland.com
josh.glucoft@kirkland.com
jiaxiao.zhang@kirkland.com
nstrickland@kirkland.com
tiffany.knapp@kirkland.com

Date: February 21, 2024

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

CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the foregoing Motion to Seal Ex. 2032 contains 876 words according to the word processing program used to prepare it.

Date: February 21, 2024

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

EXHIBIT A
STIPULATED PROTECTIVE ORDER

STIPULATED PROTECTIVE ORDER

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

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL – CONFIDENTIAL or “PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS’ EYES ONLY.”

2. Access to confidential information marked “PROTECTIVE ORDER MATERIAL – CONFIDENTIAL” 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, including other attorneys and law clerks employed by the law firms of such counsel who are reasonably necessary to assist such counsel in the proceeding but shall not be required to sign an Acknowledgement and shall be informed of the terms and requirements of the Protective Order.

(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 and of Outside Counsel 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. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in (d)(2)(A)–(E), shall be extended access to confidential information marked “PROTECTIVE ORDER MATERIAL – CONFIDENTIAL” 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 and after signing the Acknowledgment. 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. A party may designate confidential information as “PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS’ EYES ONLY.” The “PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS’ EYES ONLY” designation is reserved, and may only be used, for confidential information that the designating party reasonably believes to be highly sensitive business information, the disclosure of which is likely to cause significant harm to the business or competitive position of the designating party or would violate confidentiality agreements with third parties. Access to such confidential information marked “PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS’ EYES ONLY” is limited to the individuals identified above in Sections 2(B), 2(C), 2(E), and 2(F).

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 documents or information shall remain under seal unless the Board determines that some or all of it 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 – OUTSIDE ATTORNEYS’ EYES ONLY” and shall be produced in a manner that maintains its confidentiality.

7. 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.

(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:

Acknowledgment of Stipulated Protective Order 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]

By: _____

Date: _____

EXHIBIT B

REDLINE SHOWING CHANGES TO DEFAULT
PROTECTIVE ORDER

STIPULATED PROTECTIVE ORDER

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

~~1.~~ 1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL.” ~~– CONFIDENTIAL~~ or “PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS’ EYES ONLY.”

~~2.~~ 2. Access to confidential information marked “PROTECTIVE ORDER MATERIAL – CONFIDENTIAL” is limited to the following individuals who have executed the acknowledgment appended to this order:

~~(A)~~ (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.~~ ~~Representatives of record for a party in the proceeding.~~

(B) Outside Counsel. Outside counsel of record for a party in the proceeding, including other attorneys and law clerks employed by the law firms of such counsel who are reasonably necessary to assist such counsel in the proceeding but shall not be required to sign an Acknowledgement and shall be informed of the terms and requirements of the Protective Order.

~~(C)~~ (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)~~ (D) **In-house counsel.** -In-house counsel of a party.

~~(E)~~ (E) **Support Personnel.** Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons and of Outside Counsel 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)~~ (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.~~ 3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in (d)(2)(A)–(E), shall be extended access to confidential information marked “PROTECTIVE ORDER MATERIAL – CONFIDENTIAL” 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 and after signing the Acknowledgment. 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. A party may designate confidential information as “PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS’ EYES ONLY.” The “PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS’ EYES ONLY” designation is reserved, and may only be used, for confidential information that the designating party reasonably believes to be highly sensitive business information, the disclosure of which is likely to cause significant harm to the business or competitive position of the designating party or would violate confidentiality agreements with third parties. Access to such confidential information marked “PROTECTIVE ORDER MATERIAL – OUTSIDE ATTORNEYS’ EYES

ONLY” is limited to the individuals identified above in Sections 2(B), 2(C), 2(E), and 2(F).

~~4.~~5. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

~~(A)~~ (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

~~(B)~~ (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)~~ (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 documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

~~(ii)~~ (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 – OUTSIDE ATTORNEYS’ EYES ONLY” and shall be produced in a manner that maintains its confidentiality.

~~6.~~7. 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.

(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 of Stipulated Protective Order 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.

~~Eastern District of Virginia for purposes of enforcing the terms of the
Protective Order and providing remedies for its breach.~~

[Signature]

By: _____

Date: _____