UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELTA ELECTRONICS, INC.,
Petitioner,

v.

VICOR CORPORATION,
Patent Owner.

Case No. IPR2024-00227

U.S. PATENT NO. 9,516,761

PETITIONER'S MOTION TO SEAL

LIST OF EXHIBITS

Exhibit No.	Description
1001	United States Patent No. 9,516,761 ("'761 Patent")
1002	Declaration of Dr. Steven B. Leeb
1003	*Curriculum Vitae* of Dr. Steven B. Leeb
1004	File History of U.S. Patent No. 9,516,761
1005	U.S. No. 8,966,747
1006	Declaration of Dr. Sylvia Hall-Ellis
1007	Ericsson BMR 453 series DC/DC converters Technical Specification (July 2010), *available at* https://web.archive.org/web/20101108165728/http:/archive.ericsson.net/service/internet/picov/get?DocNo=28701-EN/LZT146395&Lang=EN&HighestFree=Y. ("Ericsson-BMR")
1008	Robert W. Erickson and Dragan Maksimovic, *Fundamentals of Power Electronics* (2d ed. 2001). ("*Fundamentals*")
1009	U.S. Patent 6,965,517 ("Wanes")
1010	U.S. Patent 6,970,367 ("Takeshima")
1011	G. Spiazzi, L. Rossetto, P. Mattavelli, P. Cova, and N. Delmonte, *Layout Considerations and Thermal Analysis of a 1.8 MHz Resonant VRM*, 2007 IEEE Industry Applications Annual Meeting, 1993 (2007). ("Spiazzi")
1012	Laszlo Huber, Kevin Hsu, Milan M. Jovanovi, Dennis Solley, Gennady Gurov and Robert J. Porter, *1.8-MHz, 48-V Resonant VRM: Analysis, Design, and Performance Evaluation*, 21 IEEE Transactions on Power Electronics 79 (2006)

1013	Excerpts of Complainant Vicor Corporation's Second Supplemental Objections And Responses To Respondents' First Set Of Joint Interrogatories (Nos. 1-20)
1014	Picture of Ericsson BMR 453 series DC/DC converter, https://web.archive.org/web/20120131104718/http:/www.ericsson.com/solutions/news/powermodules/2009/hires_BMR453_jan09.jpg.
1015	U.S. Patent No. 7,403,397
1016	Laszlo Balogh, Design Review: 140W, Multiple Output High Density DC/DC Converter, (1997), *available at* https://web.archive.org/web/20050129014555/http://focus.ti.com:80/lit/ml/slup117/slup117.pdf.
1017	J. G. Kassakian, M. F. Schlecht, and G. C. Verghese, *Principles of Power Electronics* (1st ed. 1991) (*physical copy available upon request, select excerpts filed electronically*)
1018	Power Modules: Digital DC/DC converter family integrates PMBus connectivity (2009), *available at* https://web.archive.org/web/20090902060840/http:/www.ericsson.com:80/technology/docs/article_PowerModules_digital_dc-dc.pdf
1019	U.S. Patent 6,466,454
1020	U.S. Patent 8,749,990
1021	Declaration of Nathaniel E. Frank-White authenticating Exhibits 1007, 1014, and 1018
1022	Declaration of Nathaniel E. Frank-White authenticating Exhibit 1016
1023	U.S. Patent Application No. 2011/0057713
1024	U.S. Patent 6,724,631
1025	Claim Chart for the Infringement of Independent Claim 1 and Dependent Claims 2, 3, 4, 5, 6, 7 of Complainant Vicor Corporation's United States Patent 9,516,761 by Delta U50SU4P162 High Power Density 48V / 12V

	Bi-Directional DC-DC Converter Power Module and Computing Systems Containing the Same *(filed under seal)*
1026	Ericsson BMR 453 series DC/DC converters Technical Specification (September 2008) ("BMR-2008")
1027	Vishay Siliconix N-Channel 75 V (D-S) MOSFET SiE818DF Technical Specification (July 13, 2009), *available at* https://www.digikey.com/en/products/detail/vishay-siliconix/SIE818DF-T1-E3/1656715
1028	March 25, 2014 Claim Amendment in prosecution of U.S. Patent No. 8,966,747 (divisional of '761 patent)
1029	TDK Data Sheet: FReta iQD Series – Single Output Quarter Brick Bus Converter, *available at* https://www.datasheetarchive.com/datasheet?id=0c23ebb9024bd4c7b5c5d7b96a5c82316b8b34&type=M&term=iqd48025a120v007
1030	Vishay Siliconix N-Channel 40-V (D-S) MOSFET Si7884DP (Sept. 8, 2008), *available at* https://www.vishay.com/docs/68395/si7884bd.pdf.
1031	Declaration of Henrik Borgengren

I. INTRODUCTION

Petitioner requests that Exhibit 1025 be sealed under 37 C.F.R. §§ 42.14 and 42.54.[1] Good cause to seal this document exists because it contains sensitive, non-public information.

II. GOOD CAUSE EXISTS FOR SEALING EXHIBITS 1017-20

In deciding whether to seal documents, the Board must find "good cause," and must "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." *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 36 (PTAB Apr. 5, 2013). Good cause for sealing material is established by demonstrating that the balance of the following considerations favors sealing the material: whether (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. See *Argentum Pharms. LLC v. Alcon Research, Ltd.*,

[1] In a separate motion filed herewith, Petitioner requests that the Board enter the Default Protective Order until the parties are able to discuss an appropriate protective order for this proceeding.

IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative); see also *Corning Optical Communications RF, LLC,* v. *PPC Broadband, Inc.*, IPR2014-00440, Paper 47 at 3 (PTAB Apr. 14, 2015).

Here, the document (Exhibit 1025) as to which sealing is sought is a copy of infringement contentions served on Petitioner under a protective order in an ongoing ITC proceeding between the Petitioner and Patent Owner (*In the Matter of CERTAIN POWER CONVERTER MODULES AND COMPUTING SYSTEMS CONTAINING THE SAME*, Inv. No. 337-TA-1370, USITC Pub. 802674 (Aug. 18, 2023), "ITC protective order"). The contentions include confidential proprietary and Confidential Business Information (CBI) of Petitioner. Good cause exists because the balance of the *Argentum* factors favors sealing the document at issue. Addressing the *Argentum* factors in turn:

First, the information Petitioner seeks to seal is truly proprietary and confidential, has only been served between the parties under the ITC protective order, and has not been made publicly available by Petitioner. The Trial Practice Guide provides that "[t]he 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." PTAB Consolidated Trial Practice Guide at 19 (November 2019). Further, those 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." *Id*. (citing 37 C.F.R. § 42.54). The information Petitioner seeks to protect has nothing to do with patentability, but rather involves Petitioner's accused product and how Petitioner's accused product allegedly infringes the claims of the '761 Patent. The document at issue includes proprietary and confidential business information relating to technical and other specifications of one of Petitioner's accused products in a parallel ITC proceeding.

Without an assurance that this information will be protected, Petitioner may be adversely affected by public disclosure of their commercial product details to the public and to Petitioner's competitors.

Second, Petitioner would suffer several instances of concrete harm from the public disclosure of the confidential information sought to be sealed. Disclosure of the confidential information would expose Petitioner's customers and suppliers (who are not party to this proceeding) and potentially their confidential information to scrutiny by third parties, and may jeopardize contractual arrangements between Petitioner and its customers or suppliers.

Third, the information that is sought to be sealed is entirely unrelated to the substantive patentability of the '761 Patent. Instead, the information that is sought to be sealed is pertinent only to the specific technical details of Petitioner's accused

commercial product and alleged infringement of Petitioner's commercial product of the '761 Patent claims.

Fourth, on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record. Petitioner respectfully submits that the "strong public interest" in having an open record should not outweigh a party's expectation that confidential information unrelated to patentability should be maintained as confidential. Rather, Petitioner respectfully submits that the "strong public interest" in having an open record has its basis in ensuring that all information related to patentability is available to the public consistent with the public notice function of the patent system, e.g., the reasons for upholding a patent's patentability during a post-grant proceeding should be available to the public. Thus, for example, if confidential information in an IPR related to commercial success of a claimed invention were relied upon to establish patentability of claims, such information should fairly be made available to the public consistent with the public interest, so that the public is aware of the reasons for patentability.

But that is not the case here, where the confidential information is not related to the patentability of the '761 Patent. The public interest in such a procedural finding does not outweigh or otherwise support public disclosure of Petitioner's confidential information. Rather, again, the public interest is well served in keeping business information readily available and exchangeable between parties without the

fear of incidental public exposure of confidential business information, and the public interest in having access to the confidential information in the documents to be sealed is minimal.

III. CERTIFICATE OF CONFERENCE

Petitioner does not know who will be representing Patent Owner and is serving a copy of the Petition, Motion, and appropriate accompanying documents to Patent Owner's prosecution counsel of record as reflected in USPTO records for the '761 Patent. Petitioner's counsel is available to meet and confer with Patent Owner's IPR counsel to discuss the appropriate scope of a protective order in this proceeding, including the potential inclusion of a "Outside Counsel's Eyes Only" designation.

IV. PROTECTIVE ORDER

Petitioner certifies that it will make every effort to confer with Patent Owner's counsel, once appointed, on the terms of an appropriate protective order, and requests until then, entry of the Default Protective Order. Petitioner is contemporaneously filing a Motion for Entry of the Default Protective Order.

V. CONCLUSION

Petitioner respectfully requests that the Board grant Petitioner's motion to seal Petitioner's confidential information in Exhibit 1025.

Date: November 22, 2023

Respectfully submitted,

/Russell E. Levine/

Russell E. Levine, P.C. (Reg. No. 32,153)
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned certifies that a copy of the foregoing document was caused to be served by First Class Mail, costs prepaid, to Patent Owner at the following address of record:

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