IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROCHIP TECHNOLOGY INC.,
Petitioner,

v.

APTIV TECHNOLOGIES AG AND APTIV TECHNOLOGIES LIMITED,
Patent Owners.

Case No. IPR2024-00228
U.S. Patent No. 9,619,420

PETITIONER'S MOTION TO FILE CONFIDENTIAL DOCUMENTS UNDER SEAL PURSUANT TO 37 C.F.R. §§42.14 & 42.55

Pursuant to 37 C.F.R. §§42.14 and 42.55, Petitioner Microchip Technology Inc. ("Microchip" or "Petitioner") respectfully submits this Motion to Seal and requests the Board enter the Default Protective Order found in Appendix B of the Trial Practice Guide. Pursuant to the Default Protective Order, Petitioner moves to seal the unredacted confidential version of Petitioner's Reply Brief,[1] as well as Exhibits 1100 and 1104 in their entirety.

I. GOOD CAUSE EXISTS FOR SEALING MICROCHIP'S CONFIDENTIAL INFORMATION

"Under 35 U.S.C. §316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public." But a party may file a motion with the Board to seal confidential information that is protected from disclosure. *Garmin v. Cuozzo*, IPR2012-00001, Paper 37, at 3 (PTAB Apr. 5, 2013). Only "confidential information" is protected from public disclosure. 35 U.S.C. §316(a)(7); Office Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

As detailed below, good cause exists for sealing Petitioner's Reply Brief and Exhibits 1100 and 1104 because the information is the highly confidential and proprietary sensitive business information of Microchip that is not shared publicly.

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[1] Petitioner has filed a public, redacted version of Petitioner's Reply Brief concurrently with this motion.

See, e.g., Telebrands Corp. v. Tinnus Enterprises, *LLC*, No. PGR2015-00018, Decision on Motion to Seal (Paper 41) at 2 (granting motion to seal documents that contained "sensitive business information" or discussed other exhibits that contained "sensitive information"); *see also Wright Medical Technology, Inc. v. Biomedical Enterprises, Inc.*, IPR2015-00786, Decision on Motion to Seal (Paper 37) at 2 (granting motion to seal documents that contained "descriptions of Patent Owner's manufacturing details" and "deposition transcripts of…employees that discuss business strategies, corporate management details, or product designs, testing, or manufacturing details that [one party] has deemed to be confidential."). Further, public disclosure of Petitioner's Reply and Exhibits 1100, and 1104 has the potential to significantly harm Petitioner's competitive positions because it would allow competitors to access highly sensitive business information regarding sales, and research and development, as explained in more detail below.

A. Petitioner's Reply Brief and Exhibit 1100

Petitioner's Reply Brief and Exhibit 1100 contain confidential highly sensitive business information of Microchip and a "non-party"[2] to this proceeding and are subject to non-party confidentiality obligations. This information is not publicly available, and has been and continues to be intended to remain confidential.

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[2] The non-party here is Apple, to whom Microchip owes confidentiality obligations.

Petitioner further asserts that the entirety of Exhibit 1100 contains confidential information, and as such, a redacted public version has not been submitted.

More specifically, Petitioner's Reply Brief contains a single-sentence reference to a discussion with a non-party regarding the research, design, and development of Microchip's USB products, while Exhibit 1100 is an internal email detailing a meeting with the same non-party regarding the research, design, development, and manufacturing of the same USB products. Only this one sentence will be redacted from the public version of Petitioner's Reply brief. The information in both documents is highly sensitive and the disclosure of which could harm Microchip's competitive positions because it would allow competitors to access highly sensitive business information regarding research and development, and manufacturing processes. *See Fed. Trade Comm'n v. Qualcomm, Inc.*, No. 17-cv-00220, 2019 WL 95922, at *3 (N.D. Cal. Jan. 3, 2019) (finding compelling reasons for "information that, if published, may harm [a party's] or third parties' competitive standing"); *see also Jam Cellars, Inc. v. Wine Grp. LLC*, No. 19-cv-01878, 2020 WL 5576346, at *2 (N.D. Cal. Sept. 17, 2020) (finding compelling reasons for "confidential business and proprietary information"); *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (finding sealable "business information that might harm a party's competitive standing"). In addition, Exhibit 1100 has been designated as RESTRICTED – ATTORNEYS' EYES ONLY under the currently-

governing protective order in the district court action *Aptiv Technologies AG, v Microchip Technology Inc.,* Case No. 1:23-cv-00307-JDW (D. Del.).

The unredacted version of Petitioner's Reply Brief and the entirety of Exhibit 1100 accordingly should be sealed pursuant to 37 C.F.R. §42.55.

B. EXHIBIT 1104

Exhibit 1104 is a highly confidential and business sensitive declaration made by Microchip's Director of Accounting. The declaration discusses Microchip's propriety and non-public sales information. This information is not publicly available, and has been and continues to be intended to remain confidential. In addition, the information is highly sensitive and the disclosure of which could harm Microchip's competitive positions because it would allow competitors access to highly sensitive business information regarding Microchip's sales activities. *See supra*.

Exhibit 1104 accordingly should be sealed in its entirety pursuant to 37 C.F.R. § 42.55.

II. CERTIFICATION OF NON-PUBLICATION

To the best of Petitioner's knowledge, the information sought to be sealed by this Motion has not been published or otherwise made publicly available.

III. PROPOSED PROTECTIVE ORDER

Petitioner respectfully requests entry of the Default Protective Order found in Appendix B of the Trial Practice Guide. Upon entry of the Default Protective Order,

Petitioner designates the unredacted version of Petitioner's Reply Brief and Exhibits 1100 and 1104 in their entirety, as **"PROTECTIVE ORDER MATERIAL."**

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board enter the Default Protective Order and seal and protect Microchip's confidential information contained in Petitioner's Reply Brief and Exhibit 1100 and 1104 for the duration of this proceeding (and thereafter). Petitioner further requests that the Board provisionally seal and protect the confidential information in these documents until such time as it receives and rules on this Motion.

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: January 17, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 17, 2025, a copy of the following was served in its entirety via electronic mail, upon the following attorneys of record for the Patent Owner:

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