

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
HP INC., DELL INC., DELL TECHNOLOGIES INC.,
ASUSTEK COMPUTER INC., ASUS GLOBAL PTE. LTD.,

Petitioners

v.

LITL LLC,
Patent Owner.

IPR2024-00456

U.S. Patent No. 8,612,888

PETITIONERS' MOTION TO EXPUNGE

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.56, and in view of the Board’s Judgment Granting LITL LLC’s (Patent Owner) Request for Adverse Judgment (Paper 29), Petitioners MICROSOFT CORPORATION, HP INC., DELL INC., DELL TECHNOLOGIES INC., ASUSTEK COMPUTER INC., and ASUS GLOBAL PTE. LTD. (“Petitioners”) request that certain confidential information in the record for this proceeding be expunged or permanently retained as confidential.

Specifically, Petitioners request that the full, confidential versions of the following documents currently under seal be expunged from the record or permanently kept confidential because they contain highly confidential business or technical information of Petitioners:

- Patent Owner’s Preliminary Response (Paper 11), Petitioner’s Preliminary Reply (Paper 15), Patent Owner’s Sur-Reply (Paper 18), and Institution Decision (Paper 22); and
- Patent Owner’s Exhibits 2018–2020, 2025, 2027–2028, 2032–2034, and 2038–2040.

Patent Owner does not oppose this request.

II. APPLICABLE LEGAL STANDARD

After final judgment in a trial, 37 C.F.R. § 42.56 provides that “a party may file a motion to expunge confidential information from the record.” The Trial

Practice Guide likewise explains that “[a] party seeking to maintain the confidentiality of information . . . may file a motion to expunge the information from the record prior to the information becoming public.” PTAB Consol. Trial Prac. Guide (“Trial Prac. Guide”) at 22 (Nov. 2019).

“The Board has held [that] th[e] rule controlling the expungement of confidential information is subject to the same ‘good cause’ standard for granting a motion to seal under 37 C.F.R. § 42.54.” *Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2013-00346, Paper 94 at 3 (Oct. 2, 2018). While “[t]here is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial,” this “rule balances the needs of the parties to submit confidential information with the public interest in maintaining a complete and understandable file history for public notice purposes.” Trial Prac. Guide at 22. Therefore, a party seeking expungement from the record must demonstrate “that any information sought to be expunged constitutes confidential information, and that [a party’s] interest in expunging it outweighs the public’s interest in maintaining a complete and understandable history of this inter partes review.” *Atl. Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 97 at 2 (Apr. 15, 2015).

On the other hand, when the Board has declined to expunge documents—particularly Papers “that support the outcome of our Decisions”—the Board can “maintain as confidential and under seal the unredacted versions” of those documents. *Baker Hughes Holdings, LLC v. LiquidPower Specialty Prods. Inc.*, IPR2016-00734, Paper 119 at 6-7 (Oct. 10, 2023); *see also Unified Pats. LLC v. Monarch Networking Sols. LLC*, IPR2020-01708, Paper 63 at 6 (July 26, 2022) (similar).

III. GOOD CAUSE EXISTS TO EXPUNGE OR MAINTAIN THE CONFIDENTIALITY OF THE SEALED DOCUMENTS

Exhibits 2018–2020, 2025, 2027–2028, 2032–2034, 2038–2040, Patent Owner’s Preliminary Response (Paper 11), Petitioner’s Preliminary Reply (Paper 15), Patent Owner’s Sur-Reply (Paper 18), and the Institution Decision (Paper 22) were filed under seal because they contain Petitioners’ confidential information. Pursuant to the Trial Practice Guide, sensitive information was redacted from these documents where possible, and redacted versions of the papers (but not the exhibits) are available on the public docket. *See* Papers 13, 16, 20, and 25. The present motion pertains only to the sealed copies of these documents.

During the proceeding, the Board granted Petitioners’ motions to seal the exhibits and Papers 11, 15, and 18 after finding good cause to do so (*see* Papers 14, 17, and 21), and on that basis, the Board likewise sealed its institution decision (Paper 22). The highly confidential information in each document generally relates

to the design and operation of Petitioners’ accused technology and/or to “licensing, including precise license terms and rates.” *See* Paper 12, 1–2; Paper 19, 1–2. That information remains confidential such that public disclosure would likely cause irreparable harm to the Petitioners. As such, there is good cause to expunge them now that the proceeding has concluded. Doing so would not affect the public interest, particularly since most of the record would remain publicly available. *See, e.g., Samsung Elecs. Co. v. Nucurrent, Inc.*, IPR2019-00861, Paper 85 at 4-5 (Nov. 1, 2022) (finding good cause to expunge previously sealed material where doing so did not affect the public interest). This includes materials upon which the Board relied in its (redacted) institution decision (Paper 25, 6–21) and its adverse judgment (Paper 29). *See, e.g., Bio-Rad Lab’ys, Inc. v. 10x Genomics, Inc.*, IPR2019-00565, Paper 25 at 2 (Sept. 20, 2019) (expunging exhibits not cited or discussed in the Board’s institution decision). The record of the proceeding would therefore remain understandable to the public even after Exhibits 2018–2020, 2025, 2027–2028, 2032–2034, 2038–2040, and Papers 11, 15, 18, and 22 are expunged. *See, e.g., Apple Inc. v. Firstface Co.*, IPR2019-00612, Paper 30 at 3 (Nov. 29, 2021) (finding good cause to expunge confidential material where “the record of the proceedings ... remain[s] understandable in the absence of the redacted material”). Petitioners’ interest in expunging the sealed documents (or maintaining them as confidential)

thus outweighs any potential justification for maintaining them as public. *Atl. Gas Light*, Paper 97 at 2.

A summary appears below of the documents that Petitioners request be expunged from the record or permanently kept confidential in this proceeding follows. Each section corresponds to a particular motion to seal.

A. Exhibits 2018–2020, 2025, 2027–2028, 2032–2034, 2038–2040, Patent Owner’s Preliminary Response (Paper 11)

Portions of Patent Owner’s Preliminary Response cite and discuss Exhibits 2018–2020, 2025, 2027–2028, 2032–2034, 2038–2040, each of which was designated by Petitioners as “CONFIDENTIAL” or “CONFIDENTIAL—OUTSIDE ATTORNEYS’ EYES ONLY MATERIAL” under the parties’ agreed Protective Order (Paper 17, Exhibit 1043). All of these documents were therefore filed under seal. *See* Paper 12 (Petitioners’ Motion to Seal). The confidential information in each document remains confidential to Petitioners and has not been disclosed to the public since Petitioners filed the motion to seal.

B. Petitioner’s Preliminary Reply (Paper 15)

Petitioner’s Preliminary Reply was filed under seal by Petitioners. *See* Paper 14 (Petitioners’ Motion to Seal). Certain portions refer to the same confidential information that is contained in Exhibits 2018–2020, 2025, 2027–2028, 2032–2034, 2038–2040. That information remains confidential and has not been disclosed to the public since Petitioners filed the motion to seal.

C. Patent Owner's Sur-Reply (Paper 18)

Patent Owner's Sur-Reply was filed under seal. *See* Paper 19 (Petitioners' Motion to Seal). Certain portions likewise refer to the same confidential information that is contained in Exhibits 2018–2020, 2025, 2027–2028, 2032–2034, 2038–2040. That information remains confidential and has not been disclosed to the public since Petitioners filed the motion to seal.

IV. CONCLUSION

For the reasons above, Petitioners respectfully request that the Board protect their highly confidential information by expunging or maintaining the confidentiality of Exhibits 2018–2020, 2025, 2027–2028, 2032–2034, 2038–2040 and Papers 11, 15, 18, and 22 pursuant to 37 C.F.R. § 42.56.

Respectfully submitted,

/ Jessica Kaiser /

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Date: October 23, 2024

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **PETITIONERS’
MOTION TO EXPUNGE** was served on lead and back-up counsel for Patent
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