

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

ASUS TECHNOLOGY LICENSING INC.,
Patent Owner.

IPR2024-00614
Patent 10,187,878 B2

Before JOSIAH C. COCKS, THOMAS L. GIANNETTI, and
BACH V. HOANG, *Administrative Patent Judges*.

HOANG, *Administrative Patent Judge*.

ORDER

Granting In Part Patent Owner's Motion to Seal
37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

On June 27, 2024, concurrently with its Preliminary Response, Patent Owner filed a Motion to Seal under 37 C.F.R. §§ 42.14. Paper 8 (“Motion”) The Motion seeks to seal Exhibit 2002, which is a transcript of a related district court litigation deposition of Dr. Onggosanusi, a named co-inventor of an alleged prior art patent and a current employee of Petitioner.

Motion 1. The Motion states that Petitioner designated the transcript “Confidential” pursuant to the protective order in the related litigation. *Id.*

The Motion also seeks to seal Patent Owner’s Preliminary Response (Paper 6, “Prelim. Resp.”) and Exhibit 2001 (a declaration by Patent Owner’s expert, Dr. Krunz) because they contain quotations from and discussions of certain portions of Exhibit 2002. Motion 1. Further, the Motion states

the parties will confer regarding the scope of redactions necessary to the Patent Owner Preliminary Response and the exhibits proposed for sealing and will file redacted, non-confidential versions of those documents within five business days, with redactions tailored to protect only the material necessary to avoid public disclosure of Petitioner’s confidential information

Id. at 3. Redacted, non-confidential versions of those documents have yet to be filed. Petitioner has not filed an opposition to the Motion to Seal.

The Motion also seeks entry of an agreed-upon Proposed Protective Order under 37 C.F.R § 42.54. Ex. 2063, 2064 (redlined).

On September 24, 2024, we denied institution of trial, noting that we would address the Motion separately. Paper 10, 1 n.1. We grant in part the Motion insofar as it seeks entry of the Proposed Protective Order. We otherwise deny the Motion without prejudice for the reasons discussed below.

II. DISCUSSION

The Board may grant a motion to seal “for good cause.” 37 C.F.R. § 42.54; *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34 at 3 (PTAB Mar. 14, 2013). The “good cause” standard for granting a motion to seal reflects the strong public policy for making all information in an *inter partes* review open to the public. 37 C.F.R. § 42.54; *see Garmin Int’l*, Paper 34, 3. A party moving to seal shows “good cause” for the relief requested by establishing:

(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., IPR2017-01053, Paper 27, 3–4 (PTAB Jan. 19, 2018) (informative) (citations omitted). Similarly, our Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) (“Consolidated Trial Practice Guide”)¹ explains that the Motion should “set forth the reasons why the information is confidential, or if the information has been designated as confidential by the opposing party, that party shall set forth the reasons why the information redacted is confidential and should not be made available to the public.” Consolidated Trial Practice Guide, 111.

We deny without prejudice the Motion to Seal because Patent Owner has not adequately shown good cause. Patent Owner’s statement that the documents regard the Onggosanusi deposition designated by Petitioner as

¹ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

“Confidential” in district court does not explain whether portions of that deposition are truly confidential and what harm would result from disclosure. *See* Mot. 2–3. Nor does Patent Owner address the balance of maintaining confidentiality and the strong public interest in having an open record. *See id.* Apparently, this is Petitioner’s assertion of confidentiality, not Patent Owner’s. As such, Patent Owner has not shown good cause for sealing Petitioner’s allegedly confidential information.

Additionally, the Consolidated Trial Practice Guide states that “the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version.” Consolidated Trial Practice Guide, 111. However, Patent Owner has not submitted redacted versions of the documents sought to be sealed along with the Motion as required. Thus, we do not know exactly what portions of the Onggosanusi deposition are regarded by Petitioner as confidential.

Accordingly, we authorize the parties to file, within two weeks of the entry of this Order, a Revised Motion to Seal accompanied by redacted public versions of those documents sought to be sealed. The Revised Motion to Seal should address all the considerations for good cause, as discussed above. The affected documents shall remain sealed. However, if a Second Motion to Seal is not received within two weeks, Exhibits 2001, 2002, and the Preliminary Response will be unsealed.

III. ORDER

It is:

ORDERED that Patent Owner's Motion to Seal is granted in part and the Proposed Protective Order (Ex. 2063) is hereby entered;

FURTHER ORDERED that Patent Owner's Motion to Seal insofar as it seeks to seal Exhibits 2001 and 2002, as well as the Patent Owner's Preliminary Response (Paper 6), is *denied without prejudice*;

FURTHER ORDERED that the parties are authorized to file a Revised Motion to Seal within two weeks of the entry of this Order;

FURTHER ORDERED that any Revised Motion to Seal will be accompanied by redacted public versions of documents sought to be sealed; and

FURTHER ORDERED that Exhibits 2001, 2002, and the Preliminary Response shall remain sealed; however, if a Revised Motion to Seal is not filed within two weeks of the entry of this Order, Exhibits 2001, 2002, and the Preliminary Response will be unsealed by the Board and made available to the public.

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