Filed on behalf of: AX Wireless, LLC

Entered: July 23, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL INC., and DELL TECHNOLOGIES INC.,
Petitioner,

v.

AX Wireless, LLC,
Patent Owner.

Case IPR2024-00683
Patent No. 10,554,459

JOINT MOTION TO EXPUNGE EXHIBIT 1049 FROM THE RECORD

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I. Introduction

Pursuant to 37 C.F.R. § 42.56 and the Board's Order (Paper 10), the parties jointly submit this motion to withdraw and expunge Confidential Exhibit 1049 from the record.

The parties filed a Joint Motion to Terminate Pursuant to 35 U.S.C. § 317 and 37 C.F.R. § 42.74 (Paper 8), and a Joint Request to File Confidential Statement as Business Confidential Information Pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) (Paper 9). The Board subsequently denied both, but stated that Exhibit 1049 could be withdrawn. Paper 10. As the parties are concurrently filing renewed papers to terminate this proceeding, Exhibit 1049 is unnecessary and should be stricken from the record.

II. Legal Standard

"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). If a motion to protect disclosure of confidential information is not granted, "the party submitting the confidential information will have the opportunity to have the submitted information expunged from the record." *Id.* at 20.

"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. For example, the Board has found good cause to expunge previously sealed material where doing so does not impact the public's interest. *See, e.g.*, *Samsung Elecs. Co. v. Nucurrent, Inc.*, IPR2019-00861, Paper 85 at 4-5 (Nov. 1, 2022).

The Board has expunged confidential material if "the record of the proceedings and Final Written Decisions remain understandable in the absence of the redacted material." *See, e.g.*, *Apple Inc. v. Firstface Co.,* IPR2019-00612, Paper 30 at 3 (Nov. 29, 2021). Additionally, the Board has generally expunged confidential information that it does not rely upon. *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 Decision Denying Institution").

Alternatively, when the Board has been reluctant 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 Patents LLC v. Monarch Networking Sols. LLC*, IPR2020-01708, Paper 63 at 6 (July 26, 2022) (similar).

III. Confidential Exhibit 1049 Should Be Expunged

The parties jointly move to expunge Confidential Exhibit 1049. In response to the Board's Order (Paper 10), the parties are filing a renewed motion to terminate the proceeding, along with a new confidential exhibit, Exhibit 2001, that includes all agreements that resolve the issues in this proceeding. Exhibit 2001 includes Confidential Exhibit 1049, making Exhibit 1049 unnecessary.

The Board will expunge confidential materials if "the record of the proceedings and Final Written Decisions remain understandable in the absence of the redacted material." *See, e.g.*, *Apple*, IPR2019-00612, Paper 30 at 3. This is the case for Exhibit 1049. Exhibit 1049 was filed as part of the parties' now-denied joint motion to terminate. The contents of Exhibit 1049 are in Exhibit 2001, included with the parties' renewed joint motion to terminate. Thus, Exhibit 1049

has no bearing on the record of this proceeding. Moreover, the Board stated that the parties may withdraw Exhibit 1049. Paper 10.

IV. Conclusion

For the reasons above, the parties respectfully request that the Board expunge Exhibit 1049.

Respectfully submitted,

Dated: July 23, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 23rd day of July, 2024, a true and correct copy of the foregoing **Joint Motion to Expunge Exhibit 1049 from the Record** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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