

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG DISPLAY CO., LTD.,
Petitioner,

v.

PICTIVA DISPLAYS INTERNATIONAL LTD.,
Patent Owner.

Case No. IPR2024-01094
Patent No. 8,558,223

MOTION TO SEAL

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner requests that the Board allow Petitioner to file Ex. 1025, Ex. 1026, Ex. 1032, Ex. 1038, Ex. 1039, the Reply, and the Reply Declaration (Ex. 1020) under seal pursuant to the proposed Protective Order in Attachment A. This is the same protective order that was agreed to by the parties and included in the Patent Owner's Motion to Seal dated May 5, 2025 (Paper 18). The proposed protective order differs from the Board's Default Protective Order as shown in the markup attached as Attachment B. Patent Owner indicated that it does not oppose this motion to seal.

When enacting *inter partes* reviews ("IPRs"), Congress directed the Board to "provid[e] for protective orders governing the exchange and submission of confidential information." 35 U.S.C. § 316(a)(7). Thus, "[t]he Board may, for good cause, issue an order to protect a party or person from disclosing confidential information . . ." 37 C.F.R. § 42.54(a). In *Argentum Pharmaceuticals LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018), the Board set forth the standard for sealing confidential information:

[A] movant to seal must demonstrate adequately that (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.

Id. at 3 (“the Argentum Factors”). As explained below, good cause exists for this motion to seal under the Argentum Factors.

II. DOCUMENTS TO BE SEALED

A. Schanze German Report (Ex. 1026)

Ex. 1026 is an “Expert Opinion” submitted by Patent Owner’s expert Dr. Kirk Schanze pertaining to the alleged infringement of the German counterpart of U.S. Patent No. 8,558,223 (“’223 patent”) by the Real Parties-in-Interest (“RPIs”), filed by Patent Owner in Munich Regional Court of Germany (Ref. 21 O 2163/24) (hereinafter, “the German proceeding”). Under the related litigation in the Eastern District of Texas (Case No. 2:23-cv-00495-JRG), this document was identified as containing confidential information under the protective order entered by the district court in that litigation.

B. Deposition Transcript of Dr. Kirk Schanze Dated July 21, 2025 (Ex. 1021) (“Schanze Transcript”)

The Schanze Transcript (Ex. 1021) contains excerpts from Ex. 1026 (designated as Exhibit 4 to the transcript). During deposition, Petitioner’s counsel designated the Schanze Transcript confidential given the introduction of Dr. Schanze’s German Report (Ex. 1026).

C. Pictiva German Complaint (Ex. 1038) and Certified English Translation (Ex. 1025)

Ex. 1038 and Ex. 1025 are the complaint submitted by Patent Owner in the German proceeding and its certified English translation, respectively.

D. Pictiva German Reply (Ex. 1039) and Its Certified English Translation (Ex. 1032)

Ex. 1039 and Ex. 1032 are a reply brief submitted by Patent Owner in the German proceeding and its certified English translation, respectively.¹

E. Petitioner's Reply in Support of Its Petition ("Reply")

Petitioner's Reply contains excerpts from Ex. 1025, Ex. 1026, and Ex. 1032, as well as citations to Ex. 1020 and Ex. 1021.

F. Reply Declaration of Barry P. Rand, Ph.D. ("Reply Declaration") (Ex. 1020)

The Reply Declaration (Ex. 1020) contains excerpts from Ex. 1026.

III. GOOD CAUSE FOR SEALING THE IDENTIFIED DOCUMENTS

The *Argentum* factors support granting this Motion for the reasons below.

Factors (1) and (2): Petitioner understands that the Schanze German Report (Ex. 1026) should be treated as truly confidential, such that a concrete harm would

¹The Pictiva German Reply contains redactions that remove confidential information of a third party.

result upon public disclosure. Patent Owner produced Ex. 1026 in the German proceeding and designated the entire report in the parallel district court proceeding as “Confidential – Attorneys’ Eyes Only,” pursuant to the protective order entered in the district court. Ex. 1026 contains, for example, Dr. Straßner (the RPIs’ expert in the German proceeding)’s opinions on RPIs’ noninfringement of the German equivalent patent. Additionally, the Schanze Deposition Transcript (Ex. 1021) directly quotes, discusses and cites the contents of Ex. 1026, and was designated confidential on the record accordingly.

Petitioner further contacted Patent Owner’s counsel to ask whether these materials could be filed publicly. Patent Owner indicated that it would “need to consult with the German counsel on the confidentiality designation,” but stated that it would not oppose a motion to seal. Accordingly, given that the Schanze German Report and Deposition Transcript have been designated as containing confidential information from Patent Owner, Petitioner believes that it must regard these materials as truly confidential, such that a concrete harm would result upon public disclosure, unless and until Patent Owner instructs otherwise.

Patent Owner’s Complaint (Exs. 1038 and 1025) and Reply Brief (Exs. 1039 and 1032) were submitted the German Proceeding and purport to include Patent Owner’s information on the same subject matter as discussed in the Schanze German

Report. Petitioner thus believes that it must also regard these materials as truly confidential, such that a concrete harm would result upon public disclosure, unless and until Patent Owner instructs otherwise. The same is true for Petitioner's Reply and the Reply Declaration of Dr. Rand (Ex. 1020), which cite to and include excerpts of the foregoing materials.

Factor (3): Petitioner submits that there is a genuine need to rely on Ex. 1021, Ex. 1025, Ex. 1026, and Ex. 1032 for the reasons set forth in the Reply and the Reply Declaration. The relied-upon information demonstrates, for example, Patent Owner's position on "coordination" of a metal complex and an organic compound in general as well as "coordination" of Liq and BPhen specifically; the meaning of "joint evaporation"; and the relationship between "electron hopping" and "coordination" or "chain-like structures" that Patent Owner has taken in the German proceeding.

Factor (4): Petitioner's and Patent Owner's interest in maintaining confidentiality outweighs the public interest in having an open record. As discussed above, Petitioner relies in part on Patent Owner's and Dr. Schanze's opinions and testimony to support potentially case dispositive arguments about how certain claims are rendered obvious in light of Patent Owner's own infringement theories.

Additionally, Petitioner will confer with Patent Owner regarding the scope of redactions to Ex. 1025, Ex. 1026, Ex. 1032, Ex. 1038, Ex. 1039, the Reply, the Reply

Declaration (Ex. 1020), and the Schanze Transcript (Ex. 1021) necessary to preserve the confidential information, and will file a public, redacted, nonconfidential versions of Ex. 1025, Ex. 1026, Ex. 1032, Ex. 1038, Ex. 1039, the Reply, the Reply Declaration (Ex. 1020), and the Schanze Transcript (Ex. 1021) within five (5) business days. The redactions will be tailored to protect only that the confidential information contained in the exhibits.

The Board should thus find that the present motion strikes an appropriate balance of the parties' interest in confidentiality and the public's need in the full record.

IV. CONCLUSION

Petitioner respectfully requests that the Board enter the attached protective orders and grant this Motion to Seal.

Date: August 11, 2025

Respectfully submitted,

By /David A. Garr/

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ATTACHMENT A – PROPOSED PROTECTIVE ORDER

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL,” “CONFIDENTIAL,” or, if applicable, “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

- A. Party Representatives. Outside counsel of record for a party in the proceeding.
- B. Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.
- C. In-house counsel. In-house counsel of a party.
- D. Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the

terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

- E. The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. For confidential information designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” access to, and disclosure of, such information shall be limited to individuals listed in paragraphs 2(A-B) and (D-E); provided, however, in the event a Party believes in good faith that an in-house counsel needs to access information designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to facilitate settlement discussions, the parties agree to meet and confer in good faith to address such access on a document-by-document basis.

4. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

- A. Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

- B. Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;
- C. Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and
- D. Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

- A. Documents and Information Filed With the Board.
 - (i) A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The

documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

- (ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

- B. Documents and Information Exchanged Among the Parties. Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as

“PROTECTIVE ORDER MATERIAL ,” “CONFIDENTIAL,” or, if applicable, “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and shall be produced in a manner that maintains its confidentiality.

6. This protective order does not apply to confidential information comprising source code, *.gds files, and/or live data, including information that has been designated as “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” in E.D. Texas Case Nos. 2:23-cv-00495 and/or EDTX-2-24-cv-00532. No such material shall be used in this proceeding except as may be agreed to by the parties or ordered by the Board, subject to further appropriate restrictions.

7. Absent written consent of the producing party, no person on behalf of the receiving party, including without limitation any outside consultant or expert of the receiving party, who obtains, receives, has access to, or otherwise learns, in whole or in part of material that has been designated as confidential information (e.g., “PROTECTIVE ORDER MATERIAL,” “CONFIDENTIAL,” or, “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) of a producing party under this protective order shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any patent application, or engage in any prosecution activity, pertaining to the field of the invention of the patent at issue on behalf of the receiving party or its acquirer, successor, predecessor, or other affiliate during the pendency of this proceeding and for two years after its conclusion, including any

appeals. To ensure compliance with the purpose of this provision, each party shall create an “Ethical Wall” between those persons with access to confidential information and any individuals who, on behalf of the party or its acquirer, successor, predecessor, or other affiliate, prepare, prosecute, supervise or assist in the preparation or prosecution of any patent application pertaining to the field of invention of the patent at issue. Nothing in this provision shall preclude any person who obtains, receives, has access to, or otherwise learns, in whole or in part of material that has been designated as confidential information under this protective order from participating in this *inter partes* review proceeding or another post-grant or reexamination proceeding (US or overseas), so long as such persons do not share any such information with any individual involved with amending any claims and do not directly or indirectly assist in drafting, amending, or proposing for substitution patent claims in any such proceedings. Notwithstanding the above, and solely after any claim amendments are submitted any such proceeding, any such person may still, in submissions to and appearances at the proceeding, formulate reasons and argue for patentability of such claim amendments (that he or she did not participate in drafting).

8. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information

must return, or certify the destruction of, all copies of the confidential information to the producing party.

[CAPTION]

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

[Signature]

ATTACHMENT B – MARKUP OF PROPOSED PROTECTIVE ORDER TO DEFAULT PROTECTIVE ORDER

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL,” “CONFIDENTIAL,” or, if applicable, “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

~~A. Parties.~~ Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

~~B.A.~~ Party Representatives. ~~Representatives Outside counsel~~ of record for a party in the proceeding.

~~C.B.~~ Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

~~D.C.~~ In-house counsel. In-house counsel of a party.

~~E.D.~~ Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not

be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

F.E. The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

~~3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in (d)(2)(A)–(E), shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person and after signing the Acknowledgment. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.~~

3. For confidential information designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” access to, and disclosure of, such information shall

be limited to individuals listed in paragraphs 2(A-B) and (D-E); provided, however, in the event a Party believes in good faith that an in-house counsel needs to access information designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to facilitate settlement discussions, the parties agree to meet and confer in good faith to address such access on a document-by-document basis.

4. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

- A. Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;
- B. Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;
- C. Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and
- D. Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

A. Documents and Information Filed With the Board.

- (i) A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.
- (ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall

clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

- B. Documents and Information Exchanged Among the Parties. Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL”,” “CONFIDENTIAL,” or, if applicable, “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and shall be produced in a manner that maintains its confidentiality.

6. This protective order does not apply to confidential information comprising source code, *.gds files, and/or live data, including information that has been designated as “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” in E.D. Texas Case Nos. 2:23-cv-00495 and/or EDTX-2-24-cv-00532. No such material shall be used in this proceeding except as may be agreed to by the parties or ordered by the Board, subject to further appropriate restrictions.

7. Absent written consent of the producing party, no person on behalf of the receiving party, including without limitation any outside consultant or expert of

the receiving party, who obtains, receives, has access to, or otherwise learns, in whole or in part of material that has been designated as confidential information (e.g., “PROTECTIVE ORDER MATERIAL,” “CONFIDENTIAL,” or, “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) of a producing party under this protective order shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any patent application, or engage in any prosecution activity, pertaining to the field of the invention of the patent at issue on behalf of the receiving party or its acquirer, successor, predecessor, or other affiliate during the pendency of this proceeding and for two years after its conclusion, including any appeals. To ensure compliance with the purpose of this provision, each party shall create an “Ethical Wall” between those persons with access to confidential information and any individuals who, on behalf of the party or its acquirer, successor, predecessor, or other affiliate, prepare, prosecute, supervise or assist in the preparation or prosecution of any patent application pertaining to the field of invention of the patent at issue. Nothing in this provision shall preclude any person who obtains, receives, has access to, or otherwise learns, in whole or in part of material that has been designated as confidential information under this protective order from participating in this *inter partes* review proceeding or another post-grant or reexamination proceeding (US or overseas), so long as such persons do not share any such information with any individual involved with amending any claims and

do not directly or indirectly assist in drafting, amending, or proposing for substitution patent claims in any such proceedings. Notwithstanding the above, and solely after any claim amendments are submitted any such proceeding, any such person may still, in submissions to and appearances at the proceeding, formulate reasons and argue for patentability of such claim amendments (that he or she did not participate in drafting).

6.8. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

[CAPTION]

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

[Signature]

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that the foregoing Petitioner's Motion to Seal, was served by electronic mail on the following counsel of record for patent owner:

Hong Annita Zhong (hzhong@irell.com)
Jie Gao (jgao@irell.com)
Rebecca Carson (rcarson@irell.com)
Philip Warrick (pwarrick@irell.com)
Jason Sheasby (jsheasby@irell.com)
PictivaIPR@irell.com

Date: August 11, 2025

/ David A. Garr /
David A. Garr (Reg. No. 74,932)