UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

NETLIST, INC.,
Patent Owner

Case IPR2025-00002
U.S. Patent No. 11,880,319

PATENT OWNER'S MOTION TO SEAL

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Netlist, Inc. ("Netlist") respectfully submits this Motion to Seal EX2002 and EX2005. Good cause to seal these documents exists because they include information available only to individuals with valid JEDEC membership credentials. JEDEC treats this information as restricted to its members and has requested these types of documents be filed under seal. Netlist also respectfully requests entry of the Default Protective Order.

The parties have met and conferred regarding the motion to seal and entry of the Default Protective Order, as required by 37 C.F.R. § 42.54(a). Petitioner Samsung Electronics Co., Ltd. ("Samsung") has indicated that it opposes Netlist's motion to seal. Samsung does not oppose entry of the Default Protective Order subject to the parties' agreement that Samsung's declarants may have access to EX2002 and EX2005.

II. GOVERNING RULES AND PTAB GUIDANCE

"A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion." 37 C.F.R. § 42.14. The Consolidated Trial Practice Guide ("TPG") explains that "the rules aim to strike a

balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." TPG at 19. As the TPG states, "[t]he rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information." *Id.* (citing 37 C.F.R. § 42.54).

In determining whether to grant a Motion to Seal, the Board must find "good cause." 37 C.F.R. § 42.54(a). Good cause for sealing material can be established by demonstrating that the balance of the following considerations favors sealing the material: whether (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 at 4 (P.T.A.B. January 19, 2018) (informative).

III. GOOD CAUSE EXISTS FOR SEALING EX2002 AND EX2005

Good cause exists to seal Exhibits 2002 and 2005. Exhibit 2002 comprises minutes of an invitation-only committee meeting of the JEDEC standards-setting organization. Exhibit 2005 is a PowerPoint presentation authored by JEDEC. Both

exhibits contain information available only to individuals with valid JEDEC membership credentials. JEDEC treats these types of documents as restricted to its members and has requested they be filed under seal. The information presented in Exhibits 2002 and 2005 helps support Patent Owner's argument that Samsung has failed to satisfy its burden to show that the draft JEDEC proposal (EX1015) was publicly accessible before the '319 patent's critical date. The public interest will not be harmed by granting this Motion because the record is clear and understandable from Patent Owner's Preliminary Response without providing public access to Exhibits 2002 and 2005.

To the best of Netlist's knowledge, EX2002 and EX2005 would not have been published or otherwise made publicly available outside of proper JEDEC membership authentication channels. Exhibits 2002 and Exhibit 2005 are marked in the present proceeding as "PROTECTIVE ORDER MATERIAL" per the Board's Default Protective Order.

Accordingly, Netlist respectfully moves to seal EX2002 and EX2005.

IV. DEFAULT PROTECTIVE ORDER

Netlist further moves for entry of the Board's Default Protective Order, attached hereto as Appendix A, and requests that the information referenced herein—namely, EX2002 and EX2005—be subject thereto. 37 C.F.R. § 42.54(a).

V. RELIEF REQUESTED

For the foregoing reasons, Netlist respectfully requests that the Board enter Default Protective Order and seal EX2002 and EX2005.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/*Richard M. Bemben*/

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Date: February 21, 2025

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PATENT OWNER'S MOTION TO SEAL** was served in its entirety on February 21, 2025, upon the following parties via electronic mail:

Eliot D. Williams (Lead Counsel)
Theodore W. Chandler (Back-up Counsel)
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Respectfully submitted,

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APPENDIX A

DEFAULT PROTECTIVE ORDER

The following Default Protective Order will govern the filing and treatment of confidential information in the proceeding:

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."

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) Party Representatives. Representatives of record for a party in the proceeding.

(C) 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) In-house counsel. In-house counsel of a party.

(E) 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) 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.

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" and shall be produced in a manner that maintains its confidentiality.

6. 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.

(k) Standard Acknowledgement of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

[CAPTION]

Standard Acknowledgment for Access to Protective Order Material

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]