UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

MOLECULAR REBAR DESIGN LLC,
Patent Owner.

Case: IPR2025-00356
U.S. Patent No. 8,808,909

PETITIONER'S MOTION TO SEAL AND MOTION FOR PROTECTIVE ORDER PURSUANT TO 37 C.F.R. §§ 42.54 AND 42.55

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United States Patent and Trademark Office
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Submitted Electronically via P-TACTS

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.54 and 42.55, Petitioner Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. ("Petitioner") submits this Motion to Seal a portion of the Petition disclosing certain entities that it has confidential commercial relationships with and requests entry of Petitioner's proposed Protective Order.

II. SEALING PORTIONS OF THE PETITION IS APPROPRIATE

Sealing limited portions of the Petition is appropriate because the Petition discloses a listing of entities that Petitioner has specific business relationships with concerning the technology accused of infringement in the underlying district court litigation. Petitioner does not publicize the nature of these relationships. The aggregate list of these entities is, as far as Petitioner knows, not in the public domain. Allowing such information to enter the public domain will place Petitioner at a competitive disadvantage by disclosing aspects of its supply chain to the public including its competitors. Petitioner guards the collection of these identities and the nature of these relationships closely. Petitioner thus considers the list of entities identified in the Petition to be HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY information and in need of heightened protection beyond the provisions of the Board's Default Protective Order because of the potential competitive harm that may be caused by its disclosure and dissemination.

"A petitioner filing confidential information with a petition may, concurrent with the filing of the petition, file a motion to seal with a proposed protective order as to the confidential information." 37 C.F.R. § 42.55; 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). The Board identifies 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." 77 Fed. Reg. 48,756, at 48,760.

Here, Petitioner seeks to seal the listing of entities that Petitioner has business relationships with concerning accused batteries for a variety of products accused of infringement in the related district court action. Petitioner has and will continue to designate this information in the litigation as "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" information, where the identities are disclosed under a protective order. For various reasons including pricing, competition, and protection of trade secrets, Petitioner does not and has not publicly disclosed which entities make which specific products or which entities provide batteries for those specific products at issue in the underlying litigation and instead maintains that information, including the aggregate compilation of that information, in confidence.

Court have held that such lists are entitled to the protection of protective orders in litigation. *See, e.g.*, *Drexel Heritage Furnishings, Inc. v. Furniture USA, Inc.*, 200 F.R.D. 255, 261 (M.D.N.C. 2001) (ordering disclosure of supplier lists

subject to protective order); *Nutratech, Inc. v. Syntech Int'l, Inc.*, 242 F.R.D. 552, 555 (C.D. Cal. 2007) ("[C]ourts have ordered that documents be disclosed subject to an 'attorney's eyes only' restriction. Here, Defendant has demonstrated that it will suffer competitive harm if its customer and supplier lists are disclosed directly to the president of Nutratech, Robert Green."); *In re Independent Service Organizations Antitrust Litigation*, 162 F.R.D. 355 (D. Kan. 1995) (finding that confidential supplier list was trade secret, and possibility that plaintiff might discourage suppliers from doing business with defendants was found sufficient to show potential harm from disclosure). Even if individual references to a relationship between Petitioner and one or more of these entities might be publicly available, the compilation of the information identified in the Petition is a protectable trade secret and thus entitled to the Board's protection from public disclosure. *See Ihs Global v. Trade*, 2020 U.S. Dist. LEXIS 101952, at *27 (D.S.C. May 21, 2021) ("[C]ourts have found with near uniformity that lists compiling customer, pricing, product, or supplier information constitute protectable trade secrets, even where the information they contain is publicly available."); *Abrasic 90 Inc. v. Weldcote Metals, Inc.*, 364 F. Supp. 3d 888, 897 (N.D. Ill. 2019) ("Business and financial information, including lists of actual or potential customers or suppliers, can qualify as a trade secret."). Accordingly, the listing found in the Petition is such a confidential list which should be protected by sealing it and ordering entry of Petitioner's proposed protective order.

To maintain the confidentiality of the listing of entities disclosed in the Petition, Petitioner requests entry of a Protective Order in this proceeding. Petitioner's proposed Protective Order is provided herein as Exhibit 1054. The proposed Protective Order deviates from the Board's default Protective Order in one principal respect in that the proposed Protective Order prohibits in-house counsel or other party employees from accessing certain classes of confidential information—designated "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY." A tracked changes version comparing the proposed protective order with the Default Protective Order is provided as Exhibit 1055.

III. GOOD CAUSE EXISTS FOR ENTERING PETITIONER'S PROPOSED PROTECTIVE ORDER (EXHIBIT 1054)

Good cause exists for the entry of Petitioner's proposed Protective Order because the identities of the entities that Petitioner has business relationships with that relate to the allegations of infringement warrant heightened protection and are treated as commercially sensitive information by Petitioner.

A party seeking to protect confidential information may seek entry of a protective order in a proceeding before the Board. *See, e.g., Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34 (PTAB Mar 14, 2013). Upon a showing of good cause, the Board may enter a Protective Order to protect from public disclosure such confidential information as disclosed by a party during the course of a proceeding before the Board. *See* 37 CFR § 42.54.

Petitioner is well-known for designing and developing high-end, cutting-edge consumer electronics (*e.g.*, phones, earbuds, tablets, etc.). The collective listing of entities that Petitioner has business relationships with related to the design of, manufacture of, and supply of batteries for these products is important to Petitioner's business and is competitively sensitive information that is not generally known to the public. Indeed, the collective identities of these relationships is held in the strictest confidence due to, among other things, confidentiality provisions in agreements between Petitioner and these nonparties. Disclosing such information runs the potential of disrupting Petitioner's business and those who Petitioner has commercial relationships with and may potentially harm Petitioner's competitive advantage in the marketplace. Thus, such information should be disclosed only to outside counsel litigating in this proceeding and the Board since those are the only entities and individuals with any need to know this information.

Additionally, Petitioner's interest in maintaining heightened confidentiality strongly outweighs the public's interest in having an open record because the identities of the entities that Petitioner has business relationships with that touch upon the merits of the pending litigation has no impact on the substantive merits of the Petition against the Patent-in-Suit. This information is being provided out of an abundance of caution and, if the Board were to deem it unnecessary to comply with 35 U.S.C. §312(a)(2), could even be removed from the Petition without impacting

the challenge to patentability. It is unneeded for a fulsome public record on the patentability of the challenged claims. To ensure that the public has access to as much information as possible, Petitioner is submitting a redacted version of its Petition publicly as Exhibit 1056.

Notably, the proposed changes from the Default Protective Order being proposed by Petitioner do not affect access to confidential information for employees and representatives of the Patent and Trademark Office who have a need for access to the confidential information. And, the heightened protections requested by Petitioner are believed to be needed because Petitioner understands the principals for Patent Owner have been or currently are involved in the design of batteries and their access to this information could be used to competitively disadvantage Petitioner. The revisions to the Board's Default Protective order that Petitioner proposes are noted in redline in Exhibit 1055 hereto.

Accordingly, Petitioner submits that, in light of the reasons discussed above, heightened confidentiality protections are necessary in this proceeding, and good cause exists to enter the proposed Protective Order and seal the unredacted version of the Petition that identifies the entities that Petitioner has certain business relationships with.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board grant

this Motion to Seal the sealed Petition, make public the redacted version of the Petition (Exhibit 1056), and enter the proposed Protective Order (Exhibit 1054) in this proceeding.

Dated: December 23, 2024

Respectfully Submitted,

/*Andrew R. Sommer*/

Andrew R. Sommer
Reg. No. 53,932

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on December 23, 2024, I caused a true and correct copy of Petitioner's Motion to Seal and Motion for Protective Order Pursuant to 37 C.F.R. §§ 42.54 and 42.55, including Exhibits 1054-1056, to be served by EXPRESS MAIL on the Patent Owner at the correspondence address of record for U.S. Patent No. 8,808,909 as follows:

Hunton Andrews Kurth LLP/HAK NY
2200 Pennsylvania Avenue NW
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I further certify that a courtesy copy of the above-identified materials were served on litigation counsel by electronic means upon the foregoing individuals:

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