

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TAIWAN SEMICONDUCTOR MANUFACTURING COMPANY LTD.,
Petitioner,

v.

ADVANCED INTEGRATED CIRCUIT PROCESS LLC,
Patent Owner.

IPR2025-01302
Patent 8,884,373 B2

Before MICHELLE N. WORMMEESTER, JON M. JURGOVAN, and
STACY B. MARGOLIES, *Administrative Patent Judges*.

JURGOVAN, *Administrative Patent Judge*.

ORDER

Granting Patent Owner's and Petitioner's Motions to Seal
Granting Patent Owner's Motion for Entry of Protective Order
37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

Petitioner (“Taiwan Semiconductor Manufacturing Company Ltd.” or “TSMC”) and Patent Owner (“Advanced Integrated Circuit Process LLC” or “AICP”) filed Motions to Seal in the above-identified proceeding. *See* Papers 8, 15 (“Patent Owner’s Motions to Seal”); Papers 13, 18 (“Petitioner’s Motions to Seal”).

Patent Owner moves to seal Patent Owner’s Reply Brief in support of Discretionary Denial (Paper 14), and Exhibit 2026. *See* Papers 8, 15.

Petitioner moves to seal Petitioner’s Opposition to Patent Owner’s Discretionary Denial Request (Paper 11), Petitioner’s Sur-Reply in Opposition to Patent Owner’s Discretionary Denial Request (Paper 17), and Exhibits 1024 and 1064. *See* Paper 13, 18.

Petitioner has not opposed Patent Owner’s Motions to Seal. *See* Paper 18, 1; Paper 13, 1; *see also* Paper 15, 2. Patent Owner has not opposed Petitioner’s Motions to Seal. *See* Paper 13, 1; Paper 18, 1.

On October 17, 2025, Patent Owner also filed an unopposed Motion for Entry of Protective Order, which includes Patent Owner’s proposed modified Protective Order as Attachment A and a redline comparison between Patent Owner’s proposed modified Protective Order and the Board’s default protective order as Attachment B. Paper 10.¹ Patent Owner represents that the proposed modified Protective Order “is the result of a compromise with Petitioner” and is drafted “to maintain consistency

¹ Paper 10 indicates that it “withdraws its prior Motion for Entry of Protective Order [(Paper 7)] and moves for entry of the updated Protective Order attached hereto as Attachment A.” Paper 10, 1.

between co-pending proceedings and preserve the same protections for the same information in both forums.” *Id.* at 1. In particular, Patent Owner explains, the proposed modified Protective Order “differs from the Default Protective Order in the Board’s Consolidated Trial Practice Guide (Nov. 2019)[] in that it (i) provides a ‘Highly Confidential – Attorney’s Eyes Only’ designation affording a second, higher level of protection for more sensitive confidential information” and “(ii) incorporates other provisions from the Protective Order in the co-pending district court litigation (*see* EX2009) to maintain consistency between [the] co-pending proceedings.” *Id.*

Patent Owner represents that Petitioner does not oppose Patent Owner’s Motion for Entry of Protective Order (Paper 10, 1), as subsequently acknowledged by Petitioner (*see* Paper 13, 1, 3–5 (acknowledging that “the District Court protective order (EX2009) . . . was used as a model for the protective order in the present IPR proceeding” represented by Patent Owner’s proposed modified Protective Order, and adopting Patent Owner’s proposed modified Protective Order with respect to the documents requested to be sealed), Paper 18, 1, 3 (adopting Patent Owner’s proposed modified Protective Order with respect to the documents requested to be sealed)).

II. MOTIONS TO SEAL

The record of an *inter partes* review shall be made available to the public, except as otherwise ordered, and any documents filed with a motion to seal shall be treated as sealed until the motion is decided. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14. Only “confidential information” may be protected against public disclosure. 35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54. The Board observes a strong public policy in favor of making

information filed in its proceedings open to the public. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative).

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). For a sufficient showing for a motion to seal, the Board has required 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.

Argentum, Paper 27 at 3–4; *see also Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 46 at 2 (PTAB April 6, 2015) (requiring a showing that information has not been “excessively redacted”).

Patent Owner explains that the underlying exhibit sought to be protected (Ex. 2026) “consists of a Patent Purchase Agreement between AICP and its predecessor-in-interest in and to the patent at issue in this proceeding, Nuvoton Technology Corporation Japan” with the terms of this Agreement being “confidential to both AICP and third-party Nuvoton” and representing “commercially sensitive information to both AICP and third-party Nuvoton.” Paper 8, 1–2. Patent Owner submits that “[t]he Agreement has been designated ‘Attorneys Eyes Only – Highly Confidential’ under the Protective Order in related co-pending litigation (*see* EX2009)” and urges that “Exhibit 2026 should be maintained under seal pursuant to the proposed Protective Order [(discussed *infra*)] to maintain consistency between co-

pending proceedings and preserve the same protections for the same information in both forums” and “protect the confidentiality interests of all litigants” as well as “the interests of non-parties.” *Id.* at 1–2; *see also* Paper 15, 2.

With respect to its Reply Brief in support of Discretionary Denial (Paper 14), Patent Owner explains that it “discloses the existence of and licensees of licenses granted to the patent at issue in this proceeding, as reflected in [the] Patent Purchase Agreement (‘PPA’) between AICP and its predecessor-in-interest in and to the patent, Nuvoton Technology Corporation Japan” and that “[t]he identities of such licensees and the terms of the PPA, which has been filed as EX2026 and is subject to a motion to seal, are confidential to AICP and third-party Nuvoton Technology Corporation Japan.” Paper 15, 1–2. Patent Owner urges that “[t]he unredacted reply brief should be maintained under seal pursuant to the proposed Protective Order to maintain consistency between co-pending proceedings and preserve the same protections for the same information in both forums” with respect to “the terms of the PPA filed as Exhibit 2026 [which] are commercially sensitive information to both AICP and third-party Nuvoton Technology Corporation Japan.” *Id.*

Patent Owner concurrently filed a public redacted version of its Reply Brief (Paper 16), which Patent Owner notes that Petitioner does not oppose. *See* Paper 15, 1–2.

Petitioner explains that the underlying exhibits sought to be protected (Exs. 1024, 1064) “contain[] highly confidential material.” Paper 13, 1. In

particular, Ex. 1024² “consists of excerpts from TSMC’s Invalidity Contentions in Civil Action No. 2:25-cv-324 (E.D. Tex.)” and “contains highly confidential, non-public information regarding TSMC’s accused products” and “[b]ecause the entire document remains subject to the District Court protective order, no public version of this exhibit has been filed.” *Id.* at 1, 3. Petitioner states that it “would be significantly harmed by disclosure of TSMC-1024 insofar as competitors would be able to access sensitive technical details regarding TSMC’s products,” and that its “interest in protecting this highly confidential information and the harm to TSMC if TSMC-1024 were disclosed outweigh the Public’s interest in having an open record.” *Id.* at 3–4. With respect to Ex. 1064,³ Petitioner explains that exhibit is Patent Owner’s Response and Objections to Petitioner’s First Request for Production of Documents, “which Patent Owner has marked as Highly Confidential – Attorney’s Eyes Only pursuant to the proposed Protective Order (*see* Paper 10),” and that Petitioner “has an interest in protecting this information which was marked as highly confidential by PO under the proposed Protective Order.” *Id.* at 4. Petitioner notes that “[b]ecause the entire document has been designated Highly Confidential – Attorney’s Eyes Only, Petitioner does not anticipate filing a public version of this exhibit.” *Id.* at 4.

² Petitioner states that it “relies on TSMC-1024 [(Ex. 1024)] in support of its arguments regarding settled expectations, to show a product predates the alleged priority date of the ’373 patent.” Paper 13, 3.

³ Petitioner states that it “relies on TSMC-1064 [(Ex. 1064)] to support its argument regarding lack of evidence of commercialization, assertion, licensing, or marking in TSMC’s technology space.” Paper 13, 4.

With respect to Petitioner's Opposition to Patent Owner's Discretionary Denial Request (Paper 11), Petitioner explains that it "contains information from Exhibits TSMC-1064, EX2026, and TSMC-1024, each marked as Highly Confidential–Attorney's Eyes Only." Paper 13, 4–5. And with respect to Petitioner's Sur-Reply in Opposition to Patent Owner's Discretionary Denial Request (Paper 17), Petitioner explains that it "contains information from EX2026 and the portions of unredacted Paper 16 that PO requested be redacted from the public version, each marked by PO as Highly Confidential–Attorney's Eyes Only." *See* Paper 18, 2–3.

Petitioner also filed public redacted versions of its (Petitioner's) Opposition to Patent Owner's Discretionary Denial Request (Paper 20) and of its (Petitioner's) Sur-Reply in Opposition to Patent Owner's Discretionary Denial Request (Paper 21) which, Petitioner notes, were developed through negotiation with Patent Owner (Paper 13, 5; Paper 18, 3).

Upon review of Petitioner's and Patent Owner's Motions to Seal, we are persuaded that good cause exists to seal the exhibits identified in Petitioner's and Patent Owner's Motions, and the unredacted versions of the papers identified in Petitioner's and Patent Owner's Motions. In particular, the underlying exhibits (Exs. 2026, 1024, 1064) as well as the respective briefs (Papers 11, 14, 17) appear to contain truly confidential information that Petitioner and Patent Owner certify has not been made public (Paper 8, 1–2; Paper 15, 1–2; Paper 13, 1, 3–5; Paper 18, 2–3). As noted, Patent Owner has provided a redacted version of its Reply Brief in support of Discretionary Denial, and Petitioner has provided redacted versions of Petitioner's Opposition to Patent Owner's Discretionary Denial Request and

Petitioner’s Sur-Reply in Opposition to Patent Owner’s Discretionary Denial Request (Papers 16, 20, 21). The redactions appear narrowly tailored so as to protect confidential information while balancing the public interest in an open record. *See* Paper 15, 2; Paper 16.

III. MODIFIED PROTECTIVE ORDER

The Board may, for good cause, issue a protective order “to protect a party or person from disclosing confidential information.” 37 C.F.R. § 42.54(a). A protective order is not entered by default but must be proposed by one or more parties and must be approved and entered by the Board. Patent Trial and Appeal Board Consolidated Trial Practice Guide 19–20, 107 (Dec. 2025) (“Trial Practice Guide”).⁴ The Trial Practice Guide sets forth specific guidelines on proposing a protective order and provides a Default Protective Order. *See* Trial Practice Guide 19–20, 107–122. The parties may propose modifications to the Default Protective Order and the Board will generally accept such proposed changes if they are consistent with the integrity and efficient administration of the proceedings. *Id.* at 115. For example, the parties may agree to provide additional tiers or categories of confidential information, such as “Attorneys’ Eyes Only,” and the Board will presumptively accept agreed-to changes that provide additional categories of confidentiality as long as they are reasonable and adequately define what types of materials are to be included in the additional categories. *Id.* at 115–116.

⁴ Available at https://www.uspto.gov/patents/ptab/trial-practice-guide?utm_campaign=subscriptioncenter&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

As noted *supra*, Patent Owner seeks to modify the Board’s Default Protective Order “to maintain consistency between co-pending proceedings and preserve the same protections for the same information in both forums,” with the proposed modified Protective Order “differ[ring] from the Default Protective Order . . . in that it (i) provides a ‘Highly Confidential – Attorney’s Eyes Only’ designation affording a second, higher level of protection for more sensitive confidential information” and “(ii) incorporates other provisions from the Protective Order in the co-pending district court litigation (*see* EX2009) to maintain consistency between [the] co-pending proceedings.” *See* Paper 10, 1, Attachment A at 1. Patent Owner designates Exhibit 2026 in its entirety and Paper 14 as “Highly Confidential–Attorneys’ Eyes Only” for the reasons discussed *supra* (*see* Paper 8, 1–2; Paper 15, 2), and Petitioner designates Exhibits 1024 and 1064 in their entirety and Papers 11 and 17 as “Highly Confidential–Attorneys’ Eyes Only” for the reasons discussed *supra* (*see* Paper 13, 3–4; Paper 18, 2–3).

We observe that the modified Protective Order differs from the Default Protective Order in that it provides a higher level of protection for more sensitive confidential information. *See* Paper 10, Attachment A, ¶ 1 (“Confidential information shall be clearly marked “CONFIDENTIAL – PROTECTIVE ORDER MATERIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”).

After reviewing the proposed modifications to the Default Protective Order, we determine that the changes are consistent with the integrity and efficient administration of the proceedings, and that the changes are justified by the need to maintain consistency between the parties’ co-pending

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proceedings and to preserve the same protections for the same information in both forums (district court and PTAB). Accordingly, we grant Patent Owner's unopposed Protective Order Motion.

IV. ORDER

Accordingly, it is

ORDERED that Petitioner's and Patent Owner's Motions to Seal (Papers 8, 13, 15, 18, *see supra* § I) are *granted* with respect to Papers 11, 14, 17 and Exhibits 2026, 1024, 1064 in the above-captioned proceeding; and

FURTHER ORDERED that the modified Protective Order (Attachment A of Paper 10) is entered in the above-captioned proceeding.

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