

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD, SAMSUNG ELECTRONICS
AMERICA, INC., AND SAMSUNG SEMICONDUCTOR, INC,
Petitioner,

v.

NVIDIA CORPORATION,
Patent Owner.

Case IPR2015-01029
Patent 6,992,667 B2

Before KEVIN F. TURNER, BEVERLY M. BUNTING, AND
JON B. TORNQUIST, *Administrative Patent Judges*.

BUNTING, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding
37 C.F.R. §§ 42.14 and 42.54

I. INTRODUCTION

Patent Owner filed a Motion to Seal (Paper 6, “Mot.”) with its Preliminary Response (Paper 7), as well as certain exhibits accompanying the Preliminary Response (Ex. 2001–2002, 2005, “Exhibits”) in this proceeding. Patent Owner did not file a redacted version of the Preliminary Response nor the Exhibits. In its Motion to Seal, Patent Owner avers that the Parties, after meeting and conferring, agreed to a proposed protective order.¹ Mot. 1, Appendix A. Patent Owner makes no representation as to whether Petitioner opposes Patent Owner’s Motion to Seal.

II. DISCUSSION

The record for an *inter partes* review shall be made available to the public, except as otherwise ordered, and a document 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. The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54. There is a strong public policy that favors making information filed in *inter partes* review proceedings open to the public. *See Garmin International v. Cuozzo Speed Technologies, LLC*, Case IPR2012-00001, slip op. at 1-2 (PTAB March 14, 2013) (Paper 34) (discussing the standards of the Board applied to motions to seal). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes showing that the information

¹ We note that Appendix A is unsigned, and a modification of the Default Standing Protective Order set forth in Appendix B to the Office Patent Trial Practice Guide.

is truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. *See Garmin* at 3.

Patent Owner, as the moving party, has failed to carry this burden. Patent Owner's mere assertion that the Preliminary Response and Exhibits should be sealed because of the confidential information contained therein (Mot. 1) is not sufficient, especially when weighed against the public's access rights to the evidence relied on by the parties.

Given the public's access rights to evidence relied on by the parties, redactions are to be limited to confidential information that meet the aforementioned standard. Here, Patent Owner provides no redacted versions of the Preliminary Response or the Exhibits. Patent Owner's assertion that "within ten (10) business days of the granting of an Order to seal, a redacted version of the Preliminary Response and each confidential exhibit in public PRPS" would be filed, is not sufficient to demonstrate that the redactions are limited to confidential information. *Id.* Thus, with any renewed motion to seal, Patent Owner should provide a redacted version demonstrating those portions of its Preliminary Response and Exhibits that it believes contain confidential information.

The parties should be mindful that a motion to seal is required to include a certification that the moving party has in good faith conferred, or attempted to confer, with the opposing party in an effort to come to an agreement on the scope of the protection sought. *Garmin, supra* at 3. A protective order governs the treatment of confidential portions of documents, testimony, and other information designated as confidential, as well as the filing of confidential documents or discussion of such information in papers

filed with the Board. The Board has the authority to enforce the terms of a protective order entered in a proceeding. Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48770 (Aug. 14, 2012).

In view of the above, it is important that the Board understand and agree to the terms of any proposed protective order filed with the Board. As such, the Board has provided a default protective order that the parties may follow. When the parties deviate from the default protective order, the party filing the proposed protective order should explain the differences between the proposed protective order and the default protective order, preferably by providing the Board with a redlined version of the proposed protective order that effects a comparison of the terms of the proposed protective order with those of the default protective order. A protective order that deviates from the Board's default protective order must include certain terms as outlined in the Office Patent Trial Practice Guide. *Id.* (“The Protective Order shall include the following terms: . . .”).

Before filing a further motion to seal, the parties are directed to meet and confer on the issues raised by this decision. The motion to seal filed by Patent Owner should be a joint motion that acts as a renewed motion replacing Patent Owner's original motion to seal. The renewed motion should be specific as to why each document or redacted portion of a document is confidential such that it outweighs the public interest in an open record.

III. CONCLUSION

We do not decide Patent owner's Motion to seal at this time. We note that a document filed with a motion to seal is treated as sealed until the motion is decided. 37 C.F.R. § 42.14.

IV. ORDER

In consideration of the foregoing, it is:

ORDERED that Patent Owner renew its Motion to Seal and file a redacted version of its Preliminary Response and Exhibits by December 8, 2015; and

Further ORDERED that any motion seeking entry of a protective order, other than the Board's default protective order, shall include a redlined comparison of the proposed form of protective order and the Board's default protective order and be filed as a joint motion to seal.

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