

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASML NETHERLANDS B.V., EXCELITAS TECHNOLOGIES CORP.,
AND QIOPTIQ PHOTONICS GMBH & CO., KG.,
Petitioner,

v.

ENERGETIQ TECHNOLOGY, INC.,
Patent Owner.

Case IPR2015-01362 (Patent 8,969,841)
Case IPR2015-01375 (Patent 9,048,000)¹

Before SALLY C. MEDLEY, JONI Y. CHANG, and
BARBARA A. PARVIS, Administrative Patent Judges.

PARVIS, *Administrative Patent Judge.*

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ This Decision addresses the same issue in the above-identified *inter partes* reviews. We exercise our discretion to issue one Order to be docketed in each case. The parties, however, are not authorized to use this style of filing in subsequent papers, without prior authorization.

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Background

On June 6, 2016, Petitioner, ASML Netherlands B.V., Excelitas Technologies Corp., and Qioptiq Photonics GmbH & Co. KG, and Patent Owner, Energetiq Technology, Inc. filed a Joint Motion to Terminate in each of the above-identified proceedings. Paper 35.² On June 13, 2016, we granted the Joint Motions to Terminate in IPR2015-01362 and IPR2015-01375 (“Judgment,” Paper 36), and terminated each of the proceedings with respect to both Petitioner and Patent Owner. *Id.* at 6.

Additionally, we noted that Patent Owner filed Motions to Seal (Paper 23 in IPR2015-01362 and Paper 24 in IPR2015-01375) Patent Owner Responses (Paper 22 in IPR2015-01362 and Paper 23 in IPR2015-01375) and certain documents filed as Exhibits 2008, 2010, 2016, 2027, 2028, 2030, 2036, 2037, 2040, 2041, 2042, 2043, and 2065 in each of IPR2015-01362 and IPR2015-01375. *Id.* at 4. With respect to each of Patent Owner’s Motions to Seal, we determined that Patent Owner, as the moving party, has failed to carry its burden. *Id.* However, we recognized that a denial of the Motions to Seal would immediately unseal the material that Patent Owner desires to remain confidential and the effect would be irreversible. *Id.* at 5. Therefore, rather than denying the motions, we provided Patent Owner five business days (1) to refile its motion to seal with further argument and evidence, along with public versions of the Exhibits that include redactions of only confidential material, or (2) to withdraw the motions to seal and request that we expunge the confidential versions of the Patent Owner

² For the purpose of clarity and expediency, we treat IPR2015-01362 as representative, and all citations are to IPR2015-01362 unless otherwise noted.

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Responses (Paper 22 in IPR2015-01362 and Paper 23 in IPR2015-01375), as well as Exhibits 2008, 2010, 2016, 2027, 2028, 2030, 2036, 2037, 2040, 2041, 2042, 2043, and 2065 filed in each of IPR2015-01362 and IPR2015-01375 (referred to collectively as “materials designated as confidential”).

Id.

June 21, 2016 Call

On June 21, 2016, at the request of the parties, a conference call was held between respective counsel for the parties and Judges Medley, Chang, and Parvis. During that call, the parties provided further clarification regarding the materials designated as confidential. In particular, Petitioner indicated that the information designated as confidential includes purportedly confidential information of Petitioner, as well as Patent Owner. Additionally, Patent Owner indicated that Exhibit 2066 filed on March 1, 2016 in each of IPR2015-01362 and IPR2015-01375 also includes purportedly confidential information, but was not filed under seal in error. On March 4, 2016, a replacement Exhibit 2066 was filed in each of IPR2015-01362 and IPR2015-01375, as well as a Motion to Replace Exhibit 2066 (Paper 28 in IPR2015-01362 and Paper 29 in IPR2015-01375). The Motion to Replace Exhibit 2066 requests substitution of the March 4, 2016 Exhibit 2066 for the earlier filed exhibit and further requests that the March 1, 2016 Exhibit 2066 be expunged from the record.

We reminded the parties that confidential information that is subject to a protective order ordinarily would become public 45 days after final judgment in a trial. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012). However, a party seeking to maintain the confidentiality of information may file a motion to expunge the information

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from the record prior to the information becoming public. *Id.*; *see also* 37 C.F.R. § 42.56 (“After denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.”).

During the June 21, 2016 call, we further offered as a third alternative to the options in the Judgment that upon agreement by the parties, we would expunge materials designated as confidential, as well as Exhibit 2066 filed March 1, 2016. Both Petitioner and Patent Owner represented that they agree to our expunging the materials designated as confidential as well as Exhibit 2066 filed March 1, 2016. Based on the representations made by the parties during the call, we determine that the materials designated as confidential and as well as Exhibit 2066 filed March 1, 2016 shall be expunged. Accordingly, Patent Owner’s Motions to Seal (Paper 23 in IPR2015-01362 and Paper 24 in IPR2015-01375) are dismissed as moot.

ORDER

For the foregoing reasons, it is:

ORDERED that each of the following documents shall be *expunged* from the record in each of IPR2015-01362 and IPR2015-01375: (1) Patent Owner Responses designated as confidential, in particular, Paper 22 in IPR2015-01362 and Paper 23 in IPR2015-01375, (2) exhibits submitted with Patent Owner Responses designated as confidential, in particular Exhibits 2008, 2010, 2016, 2027, 2028, 2030, 2036, 2037, 2040, 2041, 2042, 2043, and 2065, in each of IPR2015-01362 and IPR2015-01375, and (3) Exhibit 2066 submitted on March 1, 2016; and

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FURTHER ORDERED that Patent Owner's Motions to Seal
(Paper 23 in IPR2015-01362 and Paper 24 in IPR2015-01375) are *dismissed*
as moot.

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